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THE
HISTORY
Of the HIGH COURT of
PARLIAMENT,

Its ANTIQUITY, PREHEMINENCE
and AUTHORITY;

And the HISTORY of
Court Baron and Court Leet,

A Chronological HISTORY of them from the
earliest Times drawn down to the present.

Together with

The Rights of Lords of Manors in Common
Pastures, and the Growth of the Privileges the
Tenants now enjoy there.

VOLUME *the* FIRST.

L O N D O N :

Printed for R. KNAPLOCK at the *Bishop's Head*
in *St. Paul's Church-yard*, and J. TONSON at
Shakespeare's Head in the *Strand*. MDCXXXI.

THE
HISTORY
OF THE
PARLIAMENTS

OF GREAT BRITAIN
AND IRELAND
FROM THE
FIRST TO THE
PRESENT

A CHRONOLOGICAL HISTORY OF THE
PARLIAMENTS OF GREAT BRITAIN
AND IRELAND FROM THE
FIRST TO THE PRESENT



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PARLIAMENTS OF GREAT BRITAIN
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VOLUME FIRST.

LONDON:

Printed by W. Woodcock at the 'Black Swan' in
St. Dunstons Church-yard, and J. Johnson at
the 'Golden Square' in the Strand. MDCCLXXV.

To the Honourable
Sir *JOHN WODEHOUSE*,
of *Kimberly*, Baronet,

This HISTORY of
The Ancient *British* Constitution,

AND OF

The Ancient and Modern Manner of holding
National Councils and Parliaments,

Is *Humbly* INSCRIBED by,

SIR,

Your most obliged,

obedient humble Servant,

THORNHAGH GURDON.

THE NATIONAL COUNCIL ON
THE STATUS OF WOMEN

AND OF

THE NATIONAL COUNCIL ON
THE STATUS OF WOMEN

REPORT IN 1964

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For more information

contact the author

THE NATIONAL COUNCIL ON



IN this historical Account of the Government of *England*, of its Senates and Councils or Parliaments; I take a cursory View of them in other Nations, as introductory to the *British*, *Saxon* and *Norman* national Councils or Parliaments; and so gradually slide down from Antiquity to modern Times, shewing the Conformity of modern with ancient Constitutions; how ancient Laws and Decrees have been, some of them confirmed, some amended, and some totally abrogated, according to the Wisdom of the several Ages,

A 3 thereby

thereby in a short History giving the Reader a large View into times past.

The Laws and Customs of the old *Britons* in a great Measure dropt with their Recorders the *Druides*, and probably would have been totally lost, had not the *Romans* allowed the *Britons* to hold their ancient Village Courts, and there determine their own civil Rights and Properties amongst themselves, whereby some small Part of their ancient Laws and Customs were kept in Memory; with this little Stock the *Britons* (when the *Romans* deserted the Island) set up for themselves, but the hungry *Northern* Hive, soon prevented their intended Work of recollecting their Laws, the Pen was supplanted by the Sword.

The *Britons* finding they were not able to repel the *Northern* Rovers, invited the maritime *Saxons* to come to their Assistance, giving them Promise of plentiful Subsistence and generous Reward. And after the *Northern* Rob

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bers were driven home; the *Saxons* not satisfied with the Generosity of the *Britons*, set up to be their own Carvers, which produced a War between the *Britons* and their Auxiliaries, which ended in a total Conquest of the *Britons*, who were driven into *Wales* and the mountainous *Western* Parts of the Nation, there to save themselves in Places inaccessible to Armies.

The *Saxons* having taken Possession of their Inviters Inheritance, and dividing the Land amongst themselves in agreed Proportions, then set about the Work of Legislature, in order to preserve and keep in Peace what they had stolen by the Sword.

The first *Saxon* Legislator *Ethelbert* King of *Kent* (who according to *Bede*) followed the *Roman* Manner of making Laws with the Advice and Consent of his Senate or provincial Council; and those first *Saxons* Laws were Doms and Judgments upon Criminals that broke the Peace of the Church or

A 4 State,

State, which Doooms were all pecuniary and none sanguinary.

This *Dombec* of King *Ethelbert*, set such high Penalties by Mulcts and Fines upon all Criminals and Resisters of Authority, that the Determination of the Courts of Justice were obeyed and put in Execution, without any riotous Resistance of the Officers who pursued the Orders of Court.

Though Laws to punish Offences *contra pacem* were very certain, yet the Law of Inheritance, and private Claim between Man and Man was quite otherwise, Judgments and Determinations being made in the several *Hall-motes* by the Lords and their Suitors of Court, which Places of Judicature being separate Jurisdictions, having no Dependance on one another, every Lord of a *Soke* or Manor at first determined according to Will, and afterwards according to the Custom of the Manor. In these Courts of the *Soke* or Manor, Laws were made for

for the better Government of the People of the District: These By-Laws made in the several *Sokes* were very different in one, to what they were in another Manor.

The Captains that came over with the chief Captain Conductor, were Sharers in Lands and Jurisdiction with the chief Captain: Every Captain, afterwards called *Thane*, had Jurisdiction over his own Men, and made Laws in his *Soke*, for the good Government of the People of his District, which being local Laws, were found to be so inconvenient, that several Kings of the Heptarchy made general Laws for the uniform exercising of Justice in their several Kingdoms.

When *Alfred* had reduced the Heptarchy into one Monarchy, he, with the Advice and Consent of his wise Men, made a general Code of Law to be a Rule and Guide to the whole Kingdom.

Edgar

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Edgar made a Review of the Laws of his Predecessors, and brought the Laws into a farther Regularity and Uniformity, but still there remained a treble Distinction of Law, viz. the *West-Saxon*, the *Mercian*, and the *Dane* Law, which chiefly differed from one another in the Measure of Amercements, Mulcts and Fines, according to the Usage of the several Provinces.

Edward the Confessor upon a Review of King *Edgar's* Laws, with the Advice and Consent of his Parliament, made a Collection of the most useful of the Laws of his Predecessors, and rejected such as at that time were esteemed useless.

This Code of Law of the *Confessor's* time was published and enforced as a Law common to the whole Nation, and so stood Statute Law at the end of the *Saxon* Race, at the Death of *Edward the Confessor*.

William Duke of *Normandy* put in his Claim to the Crown of *England*,
from

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from the Donation of King *Edward*, and other Pretensions, which carried such a Plausibleness, as to make the *Norman* Nobility and great Men very forward in assisting him in an Enterprize that offered so fair a Prospect of Success and Advantage to them, who were by Compact to share *Saxon* Lands,, Honours and Power with the Duke.

Duke *William* upon his conquering *Harold* and his Adherents, assumed the Crown with the Consent of the *Londoners* and of many of the *English* Nobility: He seized and took to himself all the Royal Demeans of the Crown and also *Harold's* Honours, Manors, Lands and Moveables; and most of the other Lands of the *English* Nobility and Gentry, were seized and divided amongst the *Norman* Adventurers, in a Proportion suitable to the Number of Ships and Men brought over at their own Expence.

A

William

William at his Coronation, according to the Manner of the *Saxon* Kings, promised to govern by the Rule of the old Laws of *England*, and caused the Laws of King *Edward* to be reported to him and written from the Mouths of his Commissioners, employed thro' the whole Nation to collect the Laws and Customs used in King *Edward's* time.

At the latter End of his Reign he published a Code of Laws of his own, with the Consent of his Barons in his Court *de more*: And in like Manner were made the Laws of *Henry I.* and *Henry II.*

Misunderstandings and Disagreements arising between King *John* and the Barons, a War broke out between them, and continued till the King conceded to grant a Charter of Liberties, which was renewed and confirmed in Parliament by *Henry III.* and *Edward I.* in whose Reign many good Statutes were made in Affirmance and Declaratory of the good old Laws of *England*.

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A great Part of the common Law of *England* did visibly spring from the old *Saxon* Statutes, and if more of them had been preserved, the Trace of the original Institution of many Laws that now appear merely as common Law, would probably appear to have risen from old *Saxon* Statutes: Those that remain and also those of the *Norman* Kings that were made before time of Memory, are admitted and taken into the common Law and become a Part thereof.

The old Part of this History is borrowed from ancient Historians that flourished in or near the times as treated in this History, and now I pay the Debt to such of their Successors of the present time as are Lovers of Antiquity and History and willing to remember their Founders. The Study of the Antiquity and Original of our Constitution, is a Subject noble in it self, and may justly deserve the Encouragement of the most high born
English

Englishmen, and useful to all Gentlemen of Speculation or Practice, a proper Foundation for a polite modern Superstructure.

He that writes of his own Times, and of Matter of his own Knowledge, is an original Author, whose Judgment, in properly adapting his Knowledge to the Subject he treats, is a necessary Qualification, but above all his Veracity is the very thing necessary for him to imprint in his Reader's Opinion.

He that writes of Times past, must be beholden to those that wrote in those Times of those Times, and that is my Task to gather my Materials from the Ancients. The Stuff is old, the Tacking together is the only new Part of my Essay; if that, like a new Fashion, pleases, I shall ascribe it to the Goodness of the Materials, that set out the Unpoliteness of the Cutter and Contriver.

The Reader will meet with some Words that are now quite out of use,
and

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and some not spelt after the modern Manner: In this I follow old Authorities that I transcribe in copying old Historians, old Grants, Records, old Acts of Parliament, Leigers, and such like, their Words or Spelling must be literally followed; to put them into modern Dress, would be as much out of the way as to draw old *Littleton's* Picture in a long full bottom'd Wig, because he was a Judge.

In Page 321 the Word *improve* there mentioned in transcribing a Record, would have been more suitable to the present Age if I had writ *approve*, but then I had not kept close to the Record. In Page 267, I say *Edward the Confessor* in his Court *de more*, *appealed* Earl *Goodwin* for the Death of *Alfred* the King's Brother, if I had writ *impeached*, that Word would have been more agreeable to the modern Term in the Case, but the Words of the Record are, *Ego te appello*, &c. which Word the old Author

thor of the Mirror of Justices renders
appeal.

Pag. 173,
 174.

Pag. 209.

There are some Repetitions in the History where the same Quotation is a necessary Authority in two Places, as in the third Chapter that treats of the Lords in Parliament, the eighth, seventeen, and twenty first Laws of *Edward the Confessor* are transcribed, to shew that none but Lords were Members of *Edward the Confessor's* Parliaments. Then in the fourth Chapter, that treats of Knights, Citizens and Burgeses, I advance, that no Commons were Members of Parliament in *Edward the Confessor's* time, and to prove my Assertion, I again produce the aforesaid three Laws of King *Edward*, which may be again read in that Place with more Ease than to be referred back to the third Chapter, and some other Repetitions there are, which are so short as I hope will not make them tedious to the Reader.

The

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The following cursory Search into the ancient *British* Constitution, is collected out of such Historians as came within the Reach of my retired Life: The more I found, the more earnest I was in search, and I soon discovered that our modern Laws were not new Constitutions, but built upon old Foundations.

To connect the Ancient and Modern, I begin with the most remote Part, and gradually descend to the present, from thence to shew how modern Customs and Laws, grew by degrees, from ancient, short, positive Constitutions, to more extensive, rational and wise Laws, how the Simplicity of the Ancients hath been refined in later Ages, how by the Knowledge of past Ages, a right Judgment may be formed of the present.

The farther I looked into our ancient Constitution, the more I found Parliaments to be the main Hinge upon which the Government moved
a regularly,

regularly, when Ministers were just, and Parliaments free and uncorrupt; and on the contrary irregularly, when Ministers pursued private Views, from whence Bribery, Corruption and Faction got into the Parliament.

The Interest of a good King, of upright and just Ministers, and of a free Parliament is the same; in such a Conjunction the good of the Publick is the whole View, all harmoniously pursuing that Happiness, of which the following Tract will afford you Instances of the one and the other.

The first Collections I made for Self-amusement and Entertainment, not without some View of enlarging my Knowledge of things past and present, and now drawn into a Chronological Method to the End of King *James I's* Reign, which I present to the Publick as an Index to the more extensive Enquiries of Readers.

T. G

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The

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Ælius Lampridius.

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Alfred's Life. The Life of *Alfred the Great*, by Sir John Spelman, published by Thomas Hearn, A. M. at Oxford, 1709.

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Antiq. Parl. The Opinions of sundry learned Antiquaries touching the Antiquity, Power, &c. of Parliament, London, 1658. 12mo.

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Baronage. The Baronage of England by William Dugdale. London, 1675, 2 vol. folio.
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Bedford.

Bernard. The Lives of the Roman Emperors from Domitian, where Suetonius ends, to Constantine the Great, Translated by John Bernard, A. M. London, 1698. 2 vol. 8vo.

Biondi. History of the Wars of England between the two Houses of York and Lancaster; by Francis Biondi, Englished by the Earl of Monmouth, London, 1641, 2 Parts, folio.

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Bobun Q. Eliz. Bobun's Character of Queen Elizabeth, London, 1693, 8vo.

Bracton. Bracton's Treatise of the Laws and Customs of England in Henry III's time, London, 1640.

Brady. Compleat History of England; by Dr. Brady, Savoy, 1685.

Brady vol. 2d. Continuation of the compleat History, by Dr. Brady, Savoy, 1700.

Brady's Tracts. Introduction to the old English History in three Tracts,

1. An Answer to Petyt's Rights of the Commons, and Animadversions upon *Jani Anglorum facies nova*, 1683, in the Savoy.
2. Answer to *Argumentum Antinormanicum*, Savoy, 1684.
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Camb. Brit. Cambden's Britannia. Oxford, 1594. 4to.

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Cot. Posthu. Cottoni Posthuma. Divers Pieces of Antiquity by Sir Robert Cotton, published by J. H. London, 1679, 8vo.

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D.

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- Daniel*, the fifth Edition, continued by *John Trussel*, London, 1685. folio.
- Defence of Hist.* A Defence of our ancient and modern Historians against the Cavils of a late Pretender to critical History by *Zachary Grey*, London, 1725.
- Dr. Duck.* *De Usu & Autoritate Juris Civilis Rom.* London, 1653.
- Dial. Scac.* *Dialogus de Scaccario*, published by *Maddox* in his History and Antiquity of the Exchequer, London, 1711. folio.
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- Epinomis.* *England's Epinomis* by *John Selden*, London, 1683, bound up with his *Janus Anglorum* and other Tracts.
- Ethelwerd.* *Ethelwerd Patricius* his Chronicle published by *Sir H. Savil*, among the five Historians after *Bede*. *Francfort*, 1601. folio.
- Fleta.* A learned Treatise of the common Law, writ in *Edward I's* time, published by *Mr. Selden*, 1647, at London.
- Gildas.* *De Excidio Britannie*. 8vo.
- Glanvil.* A learned Treatise of the Law writ by *Ranulphus de Glanvil* in the time of *Henry II.* *Hoveden* calls him Chief Justice of England; but Judge *Hale* in his History of the Common Law, pag. 139. doubts whether the *Ranulph de Glanvilla*, who was *Justitiarius Anglie*, was the Author of this Law Treatise.

Authors made use of in this Work,

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ERRATA.

Page 107. line 29. for *Finebote*, read *Firebote*.

110. line 18. for *Læp* read *Lær*.

111. line 23. read *could not*.

114. line 11. for *ebep nyce* read *ebep bnyce*.

131. line 6. instead of 35. read 62.

138. line 27. instead of 36. read 66.

139. line 22. instead of page 38. read 68.

143. line 1. instead of page 43 to 48. read page 74 to 79.

171. line 13. instead of *Roldboran*, read *Ræd boran*.

243. line last, for page 137. read page 137 to 141.

279. line 29. instead of *enter'd*, and, read *enter'd*
in the Parliament Roll.

281. line 26. read *made use of*, &c.

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THE



THE
ANTIQUITY
OF
NATIONAL COUNCILS
OR
PARLIAMENTS.

CHAP. I.

*An Historical Account of the Government used
in this Island: Of its National Councils
and Parliaments.*



IN this Essay, a short Sketch of the original Governments of the World, is a natural Introduction to the History of National Councils; the Members were at first barely Advisers, and Assistants, and afterwards Parties with the Princes in Legislature and Administration; and Laws made in them were by Consent of Prince and People, which was the Rule to both.

Adam the Father of Mankind was Prince Newton, 9.
and Pastor, the first Government was Pater-
B nal,

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nal, Nature imprinted in the Father a due Care of his Offspring, to feed them, and find them with Necessaries of Life, to educate them and in all Articles govern them: As the Roman Civil Law has it, *In potestate nostri liberi nostri sunt*: And the great Civilian Ulpian, Tutor to the Emperor Alexander Severus, says to the same purpose, *quicquid ex matre & uxore mea nascitur, in potestate mea est*.

Newton, 136. Noah the post-diluvian Father, had three Sons, from whom the World was overspread. Each of them was Pastor and Governor of his own Family. Nimrod's Rebellion against the Sons of Noah, forced them to leave off building the Tower of Babel.

Verslegan, 4. From the Confusion of Babel the Head of each Language led away his Tribe to replenish the Earth; these peregrinating Heads of Tribes were the postdiluvian Patriarchs the Royal Pastors, who fed and governed their Clans by the Law of their Will, having Power of Life and Death over their Children and Dependants.

As People increased into great Multitudes farther Extension was necessary, and the Subdivisions were agreed on, one Father and another separating from the main Tribe went with their Children, Collaterals and other Dependants upon the Search for new Habitations, that had not been foraged there to find fresh Pasturage for their Herds and Flocks.

Councils or Parliaments.

3

The Father or Head of such subdivided Company setting down in some unplanted Country, made it his own, made that proper which was before common and open to the first that should take Possession. And there the Patriarch was Lord of the Land, and absolute Governour of the People, amongst whom he divided the Land, and removed them at Pleasure. Bedford, 100.

These Patriarchates or Subdivisions from the main Stock, were in time over-run, and violently seized, and taken into the Dominion of a neighbouring strong Tribe: *Nimrod* is recorded to be the Raifer of a great Monarchy out of the Spoils of his Neighbours, he is called a great Hunter, over-running his Neighbours, and usurping their Rights; in modern Language a Tyrant.

The small Patriarchates being seized and taken by the more powerful Patriarchs, was the original Growth of the great Eastern Monarchies; the Princes whereof were as absolute in their Provinces as the little Patriarchs were over their Children and Collaterals, their Extention being the Effect of Conquest and not of Compact.

The Weight of Government of the great Monarchies being a Burden too great for the Execution of one, the Monarchs chose a Part of the People to be their Council of Advisers and Assistants in the Administration of the whole.

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These Counsellors were not at the Time I am now treating of, Assessors to the Monarchs, they having no other Share in the Administration, but such as was committed to them by the Monarchs, who received or rejected their Advice as they pleased, and removed them from Employments at their Pleasure.

When Monarchies grew large and far extended from their Courts of Residence, Lieutenants and Deputies were necessarily sent into the remote Provinces, with Instructions to govern and administer Justice to the People according to the oral Directions they received from their Monarchs, to which the People were to conform, as being the Will and Pleasure of the Monarch, revealed to them by the Lieutenants.

As the World improved, and Letters grew into Use, the Monarch, with the Advice of his Council, formed Rules for Government of his Dominions, and had them written, and Copies delivered to all his Lieutenants, Deputies and Judges, and then Laws became more certain than when they were carried to the remote Provinces, by the Memory only of the Lieutenants.

Thus Law or the Will of the Monarch, grew up by degrees from oral Orders, to Laws put in Writing, as an uniform Rule by which all the Provinces of a large extended Monarchy were to be governed.

The

Councils or Parliaments.

The Battles between Monarch and Monarch, Patriarch and Patriarch, were at first entirely bloody; all being killed that fell into one or the others Power, they being under the Law of Nature.

The Monarchs and Patriarchs growing sensible of the Barbarity of killing all that were taken Prisoners in battle, for Preservation of their People, fell by degrees into Rules to be observed between Sovereign and Sovereign, which was the first Step towards the Law of Nations.

In private Offences and Trespases between Man and Man, the Offender was at first punished according to the Will and Pleasure of the injured Party, there being no common Magistrate to determine private Rights or private Injuries, but the Partiality and Prejudice in the Punishers, cried aloud for Regulation, and from thence the Chief or Head of a Family took upon himself to arbitrate and determine all Differences amongst his Children, Collaterals and other Dependants. Such Determinations as were wise and just proved Presidents and Rules of Judging, which from frequent Usage became of the Nature of Law, and so grew up municipal Laws by degrees.

Having given a short Sketch of the Patriarchical Governments and of the Eastern Monarchies, I proceed to the *Roman* Government from whence the Western and

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Northern Countries of *Europe* fetched their Improvements Military and Civil; where was the Senate a remarkable President for National Councils, being Parties to Laws made; from whence the *English* Constitution of King and Parliament seem to be in a great measure taken.

Moyle. 4. The Colony from *Alba-longa*, now *Albano*,
Dion. Hal. lib. 2. p. 61. with *Romulus* at the Head of it, laid the
Rom. Hist. Each. 6. 8. 10. Foundation of the *Roman* State: *Romulus*
 appointed the wisest and best esteemed of
 the People to be his Counsellors and Magistrates, and out of these he formed his
 Council of State, called the Senate, the Members whereof from their Gravity and Understanding were called *Patres*; and these had
Parl. Elfyng. 322. Portions of Land by Agreement wherein they had Property.

Romulus divided the People into three Parts or Tribes, that is to say Thirds, each Tribe was divided into ten *Curia* (i.e.) *Pagi* or Villages, and each *Curia* or Village into ten *Decuria*, and to each *Decuria* was appointed a Chief, much of the Nature of our *Saxon* Headborough; the Tribe was much the same with our Hundred or Ward.

In the grand Council the Members gave their Votes according to the *Curia*, and what the major Part of the *Curia* agreed to, was taken for the Resolution of the whole Assembly or Council, each single Man having a Vote, and this made the *Comitia Cur-*

riata

Curia; and the Law there made was called *Lex Curiata*. The Lands were divided amongst the Tribes, and they having Property were in a Federal Union with the Prince, jointly to assist one another in their several Properties, so was the first Roman Government founded in Property.

The Hundred *Patres* that *Romulus* made use of for his Senate to be his more immediate Advisers and Assistants in Affairs of the Government, he chose and made up the Number out of each Tribe and each *Curia*, such as were by him so chosen and enrolled into this venerable Assembly, he called *Patres Conscripti*. This Assembly of Counsellors was not to propose Laws; that Part *Romulus* retained to himself, and to the Senate it belonged to agree to and confirm what he proposed; such was also the Usage of our Saxon Kings in their Witengemots. Moyle, 3.

There were but two sorts of People; (*viz.*) *Patricians* and *Plebeians*, the former as Nobles were to take care of the religious Rights, bear Offices of Magistracy, administer Justice, and to be Assistant to the King as Advisers and Counsellors in all Matters of Government. Eng. Tacit. 3. vol. Annotati- ons. p. 107.

The latter, the *Plebeians*, were to till the Ground, feed the Herds and Flocks, and to follow Trades, and had no share of Administration in the Government; but the more firmly to bind them to free and voluntary Moyle. 6. 10.

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Obedience to the Laws made by *Romulus* and the *Patricians*, he allowed them to choose their own Patrons out of the *Patricians* to be their Friends, and to take care of their Interest in the Senate: And the Nobles gloried in nothing more than in the great Number of their Clients, whereby the Nobility and *Plebeians* were cemented together in Union and Interest; as were our *Saxon* Earl and Churl, our *Norman* Baron and his free Tenant; the Earl or *Thane* taking care of his Churl's Interest in the *Witengemot*, and the Baron of his free Tenants Rights and Liberties in the *Norman* Parliaments.

The Patrons in the *Roman* Senate undertook not only to take care of their Clients Interest there, but also to be their Counselers in all Cases of Law wherein they were concerned, and present or absent, espoused their Interest with as much Zeal as if they were their Children.

And the Clients on the other side, out of their Earnings by their Labour, were to furnish their Patrons with Money upon many Occasions, as to ransom them or their Sons, if they were taken Prisoners in the Wars; and to contribute to the Charges of their Magistracy and other their honourable Employments. And to the same and other Ends and Purposes did the *Saxon* Churls and *Norman* Freemen pay Rents and Services to their *Thanes* and Barons.

When

Councils or Parliaments.

When *Romulus* was in the Field in the Wars, he had a Deputy to preside and represent him in the Senate, and he was called *Præfectus urbis*, as our Kings in their Absence or Minorities had their Regents, and Protectors of their Realms.

After Peace was concluded between *Romulus* and *Tatius* King of the *Sabines*, *Romulus* chose a Hundred of the most noble of the *Sabines* and added them to the Senate, which made the Number of the Members two Hundred. *Romulus* ruled despotically: His Successor *Numa Pompilius* made Laws in the Senate, and observed them. Afterwards *Tarquin* to ingratiate himself with the *Plebeians*, chose out a Hundred of them, who for Wisdom and Valour were most eminent, and added them to the Senate, which made the Number of Members three Hundred: Those of *Romulus*, his Election and Creation, were as before said, called *Patres Conscripti*; and those of *Tarquin's* Election, *Patres minorum Gentium* (i.e.) Senators of a lower Rank. *Servius Tullius* with Advice of the Senate, made great Additions to the Laws of *Numa Pompilius*, whose Laws Kings themselves were to obey.

After the Kings of *Rome* had forfeited their Reputation and Credit with the People, the Senators were not chosen by the Kings, but by the Consuls, Dictators or Chieftains,

Eng. Tacit.
v. 6. 7.
Military
Affairs.
P. 43, 44.

Eng. Tacit.
v. 1. p. 321.
Tallens's
Tables.
A.M. 3239.
Rom. Hist.
Each. 35.
Tallens's
Tables.
A.M. 3333.
4. Inst. 1.
Cicero.
lib. 1. Epist.
famil.

Eng. Tacit.
v. 1. p. 321.

Parl.
Elfing.
364.

Chieftains, that were Governors of the People; (*i. e.*) the Nobles chose out of their own Body, such as were renowned for Wisdom, Virtue, Birth, or great Possessions, or had executed great Offices with Wisdom and Reputation.

When the *Romans* expelled their Kings, the sovereign Power was lodged in the Senate and two Consuls, in *Livy's* Words, *Omnia jura Regum tenuere primi consules*. The Consuls proposed Laws to the Senate for Approbation as the Kings did before.

The Consuls were supplanted by the Decemvirs, who were chosen to govern the Commonwealth instead of Consuls; and it was under them that the twelve Tables were made, being composed out of the best *Grecian* Laws, particularly *Solon's Athenian* Laws. And all the Laws made by Kings were abolished in hatred of Monarchy, and the Decemvirs endeavouring to perpetuate their Government, which began to degenerate into Tyranny were abolished forever, and the Consulship restored, and though the Decemvirs were deposed, the Laws of the twelve Tables remained, they being approved and confirmed by the Senate, a *Senatus Consultum* having passed *Nemine contradicente* for the ratifying of them.

This Revolution in the *Roman* State proceeded from a just Sense of Liberty; *Appius* and *Oppius*, the most arbitrary of the Decemvirs

Each. Ro.

Hist. 110.

Eng. Tacit.

V. 1. P. 3.

322.

Talant's

Tables.

A.M. 3500.

Rosinus.

494.

Decemvirs were committed to Prison, and there were their own Executioners, the other Eight banished themselves, and then an Act of Indemnity passed for all that had been the Instruments of the Decemvirs Usurpation and Tyranny, and the Senate and Consuls were restored and reinstated, and the ancient Laws and Liberties established, and the Decemvirate wholly abolished.

The Decemviri out of the *Grecian* Laws and the Laws of *Numa Pompilius*, compiled a compleat Body of Law for the Use of the *Romans*, which was called the Law of the twelve Tables, which specifick Laws are lost, but the Effects of them are taken into the Civil Law, which according to *Cicero*, is founded upon the Law of the twelve Tables.

Tho' the Decemvirs were deposed for their personal Tyranny and Wickedness, yet that wrought not such a Prejudice in the Senate as for the Vice of their Persons, to reject the good and just Laws by them collected.

Having traced down the Method of the *Roman* Senate to the End of the Government of Kings, and to *Patres Conscripti*, and *Patres minorum Gentium*, a fair Prototype of our great Council of Lords and Commons, I proceed by gentle Approaches to the History of our *British* national Councils; but to supply the Want of *British* History, must have Recourse to *Roman* Authors, as had

Gildas. 3. had *Gildas*, our ancientest *British* Historian.

Cæsar. lib. 6. p. 115. *Cæsar* and *Tacitus* both agree that their Laws and Customs of the *Germans*, *Gauls* and *Britons*, were much the same.

**Charters*. lar *Britons*) says * *Cæsar*, held their national Council in the Borders of the *Carnutes* at *Dreux* near *Paris*: In that Assembly, the Prince proposed Matters to be weighed and debated by the Nobles and the Equites, in which the *Druides* presided as Chairmen, Speakers or Directors, to whose Care were committed the Laws there made, to be duly put in Execution by them in the lesser Courts of Judicature, held in each District once a Month, which was the Court of the Street or Village, the very Prototype of our Court Baron. In that Court of the Village, the *Druides* punished Criminals, and determined civil Differences between Man and Man in all Controversies about Right: The Refractory and Disobedient to their Judgments, they prohibited coming to their Sacrifices (they being both Priests and Lawyers) which was then looked upon as the greatest and most ignominious Sentence that could be given. The Person excommunicated, was called *Wolve's-head*, afterwards by the *Saxons*, that is, he was to be esteemed as common an Enemy as a Wolf, whom all sought to destroy. The Popes run Excommunication

Life of Agricola. 10.

munication to a greater Height, for the *Druides* excommunicated none but such under their Jurisdiction as disobey'd the Laws made by Prince and People, but the Popes excommunicated Princes and People, that would not conform to their Usurpations.

Tho' the *Britons* originally took their Learning from the *French Druides*, from whom also they learnt the Administration of Affairs both sacred and civil; yet before *Cæsar's* time, the *Druides* Schools in *Britain*, were grown into such high Esteem, from their Learning, Temperance, regular Discipline, diligent Application, and universal Virtue, that the *Gauls* sent their Youth of highest Birth and Quality into *Britain*, to be educated in the *Druides* Schools, where was taught the Theology, Astrology, and Geometry of that Age. There also was taught the Law then in Use, they being the sole Lawyers, out of whose Schools the Council annually chose Judges, who determined in all Cases both sacred and civil, amerced Criminals, and adjudged Recompence and Rewards to such as recover'd in civil Actions, which is an ancient Precedent for our modern Costs and Damages.

The old *Britons*, after the manner of their Ancestors the *Gauls*, held great Councils in each Principality, I make use of the Word Principality, because, *Cæsar* says in his time, *Britain* had no Monarch, but

Cæsar.

Cæsar.

lib. 5. c. 3.

but was governed by several Princes, as the Prince of the *Danmonii*, of the *Durotriges*, *Belgæ*, *Attrebatii*, *Trinobantes*, *Iceni*, *Silures*, and several other lesser People.

Bede. lib. 2.
cap. 2. and
13.

The *Britons* having no Monarch, in Case of eminent Danger and national Concern: The several Princes agreed to meet in a general Council of themselves and their Nobles, to consult about Measures of Safety and Preservation of the whole *British* Nation, as they did upon the Alarm of *Cæsar's* Preparations to invade them: when in a national Council they chose *Cassavala* to be Commander in Chief of all the *British* Princes and their Forces: In *Cæsar's* own Words, *summa enim imperii, bellicæ administrandi, communi concilio, permissa est Cassibulano*: but he was not a Monarch, neither was there any at that time in *Europe*; he was only chosen to be Commander in that Juncture.

Life of
Agricola.
11. 12. 13.

At the second *Roman* Invasion of *Britain*, under *Claudius*, the *Britons* were divided in their Councils, did not agree to meet in a general national Council, as they did before in *Cæsar's* time; from whence they became an easier Conquest to the *Romans*, and their not joining in common Council, says *Tacitus*, contributed most to the conquering those warlike Nations, which, continues he, were formerly governed by petty Kings, that

that were unanimous against Invaders or common Enemies, but now divided into Faction and Parties, by some Ringleaders: Seldom above two or three Princes or Cities at a time, joined in concerting Measures to repel the *Romans*; so that fighting singly, they were universally overcome.

Tacitus speaking of the *Germans* and *Gauls*, from whom the *Britons* took their Model of Government, says *nec Regibus infinita potestas, de minoribus rebus Principes consultant, de majoribus omnes*, (i. e.) the Representatives of all in Council assembled.

The *Britons* called their Council *Kifritbin*, which in the *British* Language, imports to debate and treat upon Matters to be taken into Consideration for the publick Weal: The Members of their Councils were their *Edlins*, which were of royal or princely Race; and the Governors of Districts, and Lords of Villages: The Husbandmen and all the common People were esteemed no more than Servants, had no Interest in Land, being removeable at the Will of their Lord, they being Villains to their Lords, were not admitted to sit in Council.

The Sons of the Nobility were not admitted into Council, 'till they were esteemed of Age and Ability of Body and Mind to be serviceable in War, and then they were admitted by the Prince or President, delivering in open Council a Shield and Partisan

Caesar.

Partisan to the approved young Man, who from that time was esteemed a Knight or Nobleman, and a Member of the Commonwealth.

Jan. Ang. 32. The *Britons* always met in Council armed, none being allowed a Suffrage that had not a Spear or Partisan: When Matters proposed by the Prince were approved of, the Members clatter'd and rustled their Spears together, to show their Approbation, which indicated the most honourable and general Consent. If the Matter proposed was not liked nor approved, the Members shewed their Dislike or Dissent, by a clamorous or rude Noise, to shew their Contempt of the Matter proposed.

Epinomis
3.

In the general Council, the *British* Laws were made, both for Preservation of Peace and Property, and the Execution thereof committed to the *Druides*, who were the Judges in Cases both sacred and civil. The *British* Laws were not put into Writing, but carried from the Council by the Memory of the *Druides*, and then the Law of the Land was *Lex non scripta* indeed; and such as had any Inclination to be learned in the Laws of the Land, went into the *Druides* Schools, where by frequent Repetitions, the *Druides* imprinted them in the Memory of their Pupils, as the oral Law or Cabala of the *Jews* was delivered to the People by the *Rabbins*.

The

The old *Britons* were very careful of domestick Peace, in preventing private Caballing and seditious Reflections upon the Administration; their Law allowing none but the Magistrates to talk of Affairs of the Commonwealth, and that only in open Council. They were also as careful to have early Intelligence of any Insurrection or Invasion; for every Person that heard any flying Report of warlike Preparations upon the Borders, or of any approaching Danger to the Commonwealth, was obliged by their Law to impart it to a Magistrate and to none else

*Bodin de
Repub. lib.
1. cap. 4.*

In early times, good Emperors and Kings did not wholly confide in their own and their Ministers Judgments in Cases national and general, but wisely advised with the whole Nobility, or in other Words, with those that had a joint Interest with the Monarchs in Preservation of national Property; good Princes and good People's Interests being the same. The Monarchs of the World may be accounted of but two general kinds, viz. the Patriarchal and Elective; in the first Class, is included, all despotick Monarchs, in the latter, all that sprung from Leaders of peregrinating People, as were our Ancestors the *Scythians*, *Goths* and *Saxons*, who, when they found occasion to extend themselves, chose a Leader, as *Woden* was of the Herd that came into *Germany*, and *Hengist*,
C of

of those that first came into *Britain*; who designing the Conquest of this Island, agreed with his Associates, what share of Administration and Property Prince and People should have, from whence his Assistants, as joint Undertakers, and their Heirs, were Sharers in Government and Land conquered from the *Britons*.

S. Taylor.
31.

During the time of the *Romans* Continuance in *Britain*, there were to be sure no national or provincial *British* Councils; but the *Romans* allowed them to determine their own civil Rights amongst themselves in the little Court or Council of the Village, and that was such a Favour as no other *European* Province of the Empire enjoyed, to judge their own Differences according to their own Law. But in the *Asian* Provinces it appears in sacred Writ, that the *Romans* allowed the *Jews* the Exercise of their Law in all but capital Cases; and therefore *Pilate* willing and desirous to save *Jesus's* Life, bad them take him and judge him according to their Law, well knowing the *Romans* had not allowed them any Judicature in capital Cases. And in another place, *Then said Pilate take ye him and judge him according to your Law*. This Digression is only to shew, that tho' no *European* Province had the Favour of enjoying their own Laws, in relation to their particular Customs, which were of no moment to the *Romans*; yet the *Britons*

St. John.
18. 31.

Britons had, which may be laid to the Wisdom and Policy of the *Romans*, rather than to any Favour or Affection they had for the *Britons*, who tho' conquered, were a daring brave and valiant People, and seeing they suffer'd patiently their conquering Masters to erect Forts and Camps, and without Force paid Tribute; the *Romans* wisely determined to grant the *Britons* some particular Favours, rather than by despotick Rule, provoke a martial, daring, brave People; which Character of them shines through all the *Roman* Authors that treat of *Britain* and its old Inhabitants.

When the *Romans* deserted *Britain*, the Princes reassumed their ancient Form of Government. The Successor of every Prince claiming and taking possession of the Principality of his Ancestor, but not without Controversy, their * *Tylwyth* for want of Writing being grown uncertain, during the four hundred Years and more that the *Romans* continued Masters of the Nation; besides the *Tylwyth* Singers, the *Bards* and *Druides* being discountenanced by *Claudius* and his *Roman* Successors, the Genealogies of Families were in a great Measure lost, and the Claims of the several *British* Princes so uncertain, that they fell into Bickerings and Battles amongst themselves about Rights of Succession and Limits of Dominions.

* Genealogy.

*Kilian.
voco. Edel.*

*S. Tayior.
49.*

Gildas.

The Northern Hive of *Picts* and *Scots*, took Encouragement from the Contests amongst the *British* Princes, and invaded them with a numerous hungry Tribe, which brought the *British* Princes to agree upon a national Council of Princes, *Edlins* and other Nobles, to consult of proper Measures for preserving themselves from the Northern Inroad; and in this general Council, *Vortiger* was chosen to be Commander in chief of the *British* Princes and their Forces; which proving too weak to repel the Northern Incurfion, another general Council was summoned, wherein *Vortiger* was ordered and directed to invite the maritime *Saxons* (who even in the *Romans* time infested the Coasts) to come to their Assistance.

The *Saxon* Auxiliaries, after a fifty Years War, became Masters of the *Britons*, and Possessors of their Lands: During the Wars between the *Britons* and *Saxons*, Law laid asleep, the Sword supplying its Place. But after the *Saxons* had made a compleat Conquest, they fell to the Work of Legislature, to make Laws for preserving the Property they had obtained.

In time, seven *Saxon* Kingdoms sprung up in *Britain*, *Hengist* erected the Kingdom of *Kent*, in the Year 457, and afterwards six others were erected; the times of their Erection and the Bounds of their Dominions being foreign to the Subject of my Essay, I

proceed to give an Account of the *Saxon Councils*.

And first, of the Name, they called their great Council, *Witenagemote*, a Word compounded of *Saxon* and *British*, the former Part of the Word being *Saxon* and the latter *British*; *Wita* is in *Saxon* a wise Man M.S. Parl. (i.e.) a noble Man: *Gemot* in the *British* cap. 1. Language is a Council or Synod, so *Witenagemote* is a Council of wise Men or noble Men. In the the ancient *British* Language, *Gamartha* or *Camartha* is the Name for a good and charitable Meeting of the rich Inhabitants of a Village, to contribute to the Relief of the Poor, and *Camote* is the modern *Welch* Term for any Court inferior to the hundred Court, as the Court *Leet* or *Friburgh*, where the Suiters assemble to do Justice to the People; which in preventing the People's Expence of travelling far from Home, is a charitable and good Work to the People. *Cantred* or *Cantref*, Sir 3. Priſe, 17. is the *British* Name of the Division of the Country, that is with us called the Hundred, and *Camote*, is what we now call Seignory or Manor.

The Act or Ordinance made in Council, the *Saxons* termed *Gerædnisse* (i.e.) a wise Law, from *Gerædod*, *doctus*, wise or well taught, which is very consonant or rather agreeable to the Term *Witenagemote*, an Assembly of wise or well taught Men.

The Antiquity of National

The Original of the *English* Government is much after the Manner of that brought into *Germany* by the *Saxons*, by the *Franks* into *Gaul*, the *Visigoths* into *Spain*, the *Ostrogoths*, and after them the *Lombards* into *Italy*. And the *English Saxons* formed the Model of their Government here, after the Manner of the *Goths* their Ancestors, who divided the Spoils of the *Roman Empire*, that they acquired, viz. by general Consent of the military Undertakers; who when Success attended assembled in Council, here by Vote to every one was allotted a Part in proportion to their Merit, in the Judgment of the Council.

The *Saxon* Conquerors of *Britain* were joint Undertakers, and divided the conquered Lands amongst themselves, in such Proportion as was agreed in the general Council of Commanders in the Undertaking. After the *Saxon* Kings embraced Christianity, they took an Oath to observe the Laws, at the time that they took the Crown and Government upon them, both King and People; each had their separate Liberty and Property. Liberty respects the Person, and Property the Estate.

The chief Commander soon assumed the Title of King, but far from the strict Sense of the Word Monarch, for he did not conquer the *Britons* with stipendiary Soldiers that were paid *cum solidis*, but by

the Assistants that came with him under no other Terms, than no Purchase no Pay, and all of them were to have a Share (by prior Agreement) in the conquer'd Lands, in such Proportion as was to be agreed in the Council of Undertakers; so were the Saxon Governments here founded in Property. The Assistants were *Comites Regis*, the King's Companions and Collegues, the Allodians of the Saxons. The chief Commanders or Leaders, afterwards called Kings, acted no ways in Government without the Advice of their Assistants in Conquest; the joint * Undertakers, who were at first by the Latin Authors termed *Capitanei*, as having a capital or original Right in the Shares of the Britons Lands; and these *Capitanei* were not only Sharers with the Kings in the conquer'd Lands, but also in the Administration of the Government, being Members of the King's great Council, and therein had a deliberative Authority in consenting to Laws and the highest Matters of State; they also had a judicial Authority, being the supreme Court of Judicature of the Nation.

* Col-
legues.

During the Heptarchy, every Kingdom had its *Witenagemote*, wherein Laws were made for the Use of each particular Kingdom; and when Laws were made in one of the Kingdoms, that were remarkably wise and good, the rest of the Kingdoms received them,

as general Laws throughout the whole Nation, as the Laws of *Ethelbert* King of *Kent*, *Ina* of the *West Saxons*, and *Offa* of the *Mercians*, were received by the other Kings of the Heptarchy, they being made by Kings and *Capitanei*; all of the same Race received them from one another to shorten the Work of Legislature, and according to an ancient Historian, one of those Kings, from whom the rest received Laws, was stiled King of the *English* Nation. *Ethelwerd* called this chief King, *Anglorum Rex potentissimus*, who from his being esteemed the most powerful and wise, the rest of the Kings of the Heptarchy sent some of their *Wita's* to his *Witenagemote*, when new Laws were to be made.

Ethelwerd,
lib. 3.
cap. 2.

There being Codes of Law made by the several Kings of the Heptarchy in their own Dominions, I shall give a short Account of the way and manner of making those provincial Laws, before I come to the Laws of the great King *Alfred*, which were common to the whole Nation.

The ancientest Code of Law of the *Saxons*, that the rust of Time has not bereaved us of, is that of the first Christian *Saxon* King *Ethelbert* of *Kent*; and in this Essay I shan't offer at mentioning the particular Laws made by him in his *Witenagemote*, they being at large published by several learned Men, my Intent reaching no farther

ther than to shew how Laws were made and by what Consent and Authority.

ETHELBERT, Sirnamed *FREN*.

Ethelbert's Laws were made in his *Witenagemote* by the Advice of his *Wita's*, which were the landed Men, such as were original Sharers of the *Britons* Lands: *Bede's* Bede. lib. 2. ca. 5. p. 64.

Character of this King's Laws, I give in the venerable old Author's own Words.

Qui inter cætera bona, quæ genti suæ consulendo conferebat, etiam decreta illa judiciorum juxta exempla Romanorum cum consilio Sapientium constituit. Quæ conscripta Anglorum Tit. bon. 632.

sermone hætenus habentur & observantur ab ea. Dr. *Duck* says such of the *Saxon* Kings Duck. P. 134.

as excelled others in Piety and Virtue, did in their Decrees and making of Laws often imitate the *Romans*, and particularly mentions King *Ethelbert*. The rest of the Kings of the *Heptarchy* received this King's Laws and enforced them in their Dominions.

The *Decreta Judiciorum*, the *Liber Judicialis* or *Judiciarius*, and *Dombec* in *Saxon* are all the same, and may be called the *Saxon* and first *Magna Charta*, being the certain Dooms, Judgments and Sentences affixed to Crimes by the King and his *Wita's* as a Rule and Guide to the Judges in punishing Offences.

The noble *Britons* that fled from the conquering *Saxons* into *Wales*, continued the Use

*Bede. lib. 2.
cap. 2. p.
98, 60.*

*Tallens's
Tables.
A.M. 3022.
Tyrrel.
164. Sir J.
Prise. 19.*

Use of great Councils there in *Ethelbert's* time, as appears from *Bede*, upon the Occasion of *Austin's*, being by King *Ethelbert*, made Bishop of *Canterbury* and Primate; who sent to the *Welsh* Bishops, to acknowledge his Primacy, which they could not do, they answer'd, without the Advice and Consent of a provincial Synod; accordingly a Synod met of seven *British* Bishops, *Dinoth*, Abbot of *Bangor*, and many other learned Men: In this Council it was agreed that they could not acknowledge the Primacy of *Austin*, because they had a Primate in their own Country, the Archbishop of *Caerlean* upon *Uske* in *Monmouthshire*.

HLOTHAR and *EADRIC* Kings of *Kent*.

The next Code of *Saxon* Laws were made in the time of *Hlothar* King of *Kent*, with the Advice of his *Wita's* in Council assembled; which Laws were confirmed by the next King *Eadric* and his *Wita's*; which Confirmation being without any Alteration or Addition, that Code of Law is called the Laws of *Hlothar* and *Eadric*.

WIGHTRED King of *Kent*.

*Chron.
Sax. 48.*

The next *Saxon* Legislature held a *Witenagemote* at *Berghamsted*, where his Code of Law was made *Anno Dom. 694*. The Decrees were signed by the King, the Bishops

shops of *Canterbury* and *Rochester*, the Abbots, Abbesses, and many wise Men. Whether this Assembly at *Bergamsted* was a *Witenagemote* of the Bishops and Lay Nobility, or a Synod of Ecclesiasticks only, makes no Alteration in my Design, which is to shew that our Kings always took the Advice of their People in making Laws either Ecclesiastical or Civil.

Spel. Com.
Tom. 1.
194.

INA, King of the *West Saxons*, by the Advice of *Cenred* his Father, *Hedda* and *Erkenwald* his Bishops, his Aldermen and other *Wita's* in Council assembled made his Code of Law, for a Rule and Direction to his Aldermen and his other Judges, and the Measures of the People's Obedience.

Archæon.
1.

In his first Law, the enforcing Word is in the plural Number, *Præcipimus*, (i. e.) We, the King and Members of the *Witenagemote*, command the following Laws to be observed; from whence it seems the Nobles had not only a Share with the King in making the Laws, but also in the enforcing and putting them in Execution.

Ina was one of those Kings of the Heptarchy that *Ethelwerd* called *Anglorum Rex primus* to whose Laws the rest of the Kings of the Heptarchy agreed, and received them into their Dominions, and were in some measure Parties to them; for when Matters of national Concern were to be debated in the

Alfred's
Life. 15.

the Council of that King to whom was conceded the Preheminence; the other Kings sent some of their Counsellors to be present there, to debate and consent, and bring the Laws there made into the Kingdoms from whence they were sent.

OFFA King of *Mercia* is reckoned among the Legislators, tho' no Code of his Laws is published by either *Lambert* or *Wilkins* in their Editions of the *Saxon* Laws; but Laws were made in his time and ascribed to him by *Alfred*, who towards the compiling his Code of Law, says he inspected the Laws of *Ina*, *Offa*, and *Ethelbert*, the first Christian *Saxon* King, who chose out the best and took them into his own Laws with the Advice and Approbation of his Council.

Stel. Con.

Tom. 1.

309, 313.

Offa held two provincial Councils one at *Verolam*, and one at *Colchyth*, in which latter were *Offa* and his Son, the King of the *East Saxons*, the King of the *West Saxons*, the King of *Kent*, the King of *Northumberland*, and three Kings of *Wales*, with fifteen Bishops and twenty Earls.

KENWULF King of the *Mercians*, held a *Witenagemote* in the Year 811, where a Charter was executed by that King, wherein he mentions the several Orders of Men that were present in that Assembly,
(viz.)

(viz.) *Merciorum Optimates, Principes, Comites, Procuratores, meique Propinqui*; of which I shall be more particular in the Chapter of the constituent Members of Parliament.

EGBERT held a *Witenagemote* at *Spel. Con.*
Kingston, where the Power of the Council *Tom. 1.*
appears to be very great; the Particulars *340.*
whereof I reserve 'till I come to the Chapter of the Power and Privilege of Parliament.

ETHELWOLF in the Year 855, held a *Witenagemote* at *Winchester*, where the tenth of the Kingdom was given to the Church by the King, *cum Thanis, Baronibus & Populo, infinita multitudine, qui omnes Regium Chirographum laudaverunt, Dignitates vero sua nomina subscripserunt*; what the great Number of People were, shall be described in the Chapter of the constituent Members of Parliament.

ALFRED, with the Advice and Consent of his *Wita's* in *Witenagemote*, made his Code of Law that was common to the whole Nation, and enacted, that a *Witenagemote* should be held twice a Year and oftner if need were. *Alfred's Life. 157. Mirror. 5, 6. Daniel, fol. 12.*

The Heptarchy being reduced into one Monarchy by King *Alfred*, he had the Nobles of the Nation at his Court at the three *Tyrrel. 261.*

The Antiquity of National

three great Festivals of *Easter*, *Whitsuntide*, and *Christmas*, when they assembled in course; from whence it was called the Court *de more*: If the Affairs of the Nation required a Meeting at any other time, particular Summons were sent to the Nobles, and the cause of Summons made known, first in the Writ of Summons, and then at the Meeting.

Cot. Post-
hum. 44.

The *Witenagemote* and Court *de more* in nothing differ'd as to Power and Proceedings; when a *Witenagemote* was summoned upon extraordinary Occasions that fell out between the great Festivals, the same Order of Men were summoned that assembled in course at the great Festivals, viz. the Nobles, Bishops, Earls, and *Thanes ex more* assembled.

From the Saxon Court *de more* sprung the three great Courts of Chancery, King's Bench and Common-Pleas.

Alfred made Peace and League with *Guthron* the Danish King, and appointed the Bounds of his Dominions and gave him Laws, which were agreed to and confirmed by *Alfred's* and *Guthron's* Nobles; so that *Alfred* was supreme Lord and Legislator of the whole English Nation, tho' *Guthron* had allotted to him the Kingdoms of the *East Angles* and *Northumberland* for him and his *Danes*, that were agreed to remain in the Nation.

EDWARD

Councils or Parliaments.

31

EDWARD the Elder, confirmed and enlarged the League between *Alfred* and *Guthron*, by the Consent and with the Approbation of his and *Guthron's* Nobles. Archaism 41.

But his Laws published for a Rule and Direction to his Judges, Ministers and People, seem by the Preface to be *Edictum Principis*, beginning with, *Ego Edwardus Rex, his omnibus qui Reipublicæ præsunt, etiam atque etiam mando, ut omnibus (quoad ejus facere poterint) æquos se præbeant judices, perinde ut in * Judiciali libro Scriptum habetur, &c.* * Dombec.
Tit. Hon.
632.

But 'tis to be observed, this positive Command of the King, has no relation to new Law, but an enforcing the old Laws in *Dombec*, which from three hundred Years Trial and Experience, were found to be good and wholesom, and received by all former Kings up to *Ethelbert*; in whose time was made that Directory of Law called *Dombec*, to which King *Edward* referr'd. What new Law was made by *Edward*, was made with the Advice and Consent of his wise Men in his *Witenagemote*, held at *Exeter*, as is plainly express'd in his Fourth Law, *de Pace. Edwardus Rex, Exonia com-noratus, ac Sapientium suorum usus consilio, &c.* Archaism 19.

ÆTHELSTAN's Laws are enforced by the King, with the authoritative Words *mando & præcipio*, yet in the Text, they are said to be made with the Advice of *Wulfbern* Archbishop,

Archbishop, the other Bishops, & *Dei Ministrorum*; this first Part of *Ethelstan's* Laws, being chiefly relating to the Service of God, there is no mention made of any Persons at the Council besides Ecclesiasticks, so that I take it to be an Ecclesiastical Synod.

Archæion
53.

This King's Laws made at *Grancbester* in *Cambridgeshire*, were with Consent of the whole Nobility, as appears in the Conclusion, (*viz.*) *Decreta actaque sunt hæc omnia in celebri Gratanleano Concilio cui Wulfhelmus Archiepiscopus & cum eo Optimates ac Sapienties ab Æthelstano evocati frequentissimi.* The Members of that Council must be in modern Language, Lords Spiritual and Temporal.

The Laws made in this King's time at *Exeter*, are in the Law it self said to be made by the King and his *Wita's*.

This King held also a *Witenagemote* at *London*, wherein were made the *Judicia Civitatis Lundanica* by the Advice and Consent of the Bishops and *Gerefa's* (i. e.) Earls or Aldermen, to which Constitutions *tan Comites quam Coloni* (as in the *Latin Translation*) swore Observance: Tho' Earls and Churls are mentioned together in that Part relating to the Swearing to the Observance of those Laws; yet it is to be noted, that in the enacting Clause the Churls are not mentioned; the Words being, *Hoc est consilium quod Episcopi & Præfecti edixerunt*

Wilkins 65.
Defence of
Hist. 17.

wh

Councils or Parliaments.

33

who were the Members of this King's *Witenagemotes* shall be more particularly mentioned in the Chapter of the Persons that the great Councils consisted of.

EDMUND held a Mycel Synod at *Wilkins* 74
London, of the great Ecclesiasticks and Laicks, by whose Advice and Consent his Laws were made.

In the same Manner did the *Welch* make their Laws at this time; for in *Edmund's* *Archaion* 57.
time, *Howell Dba*, King of *Wales*, with *Spel. Con.*
the Advice and Consent of his Nobles of *Tom. i.*
Wales, revised the old *British* Laws, when *4c8.*
such of the old *British* Laws as he and his *Sir J.*
Council judged to be obsolete and useless *Prise, 53.*
were rejected, and such as were esteemed
wholesom and suitable to the time, were
retained in the new Code of Law then made; *Orig. Jur.*
and this Collection, together with the *54.*
Addition of some new Laws, was called
the Laws of *Howel Dba*, as the Collection
of the old *Saxon* Laws, with the Additions
made in *Edward the Confessor's* time, was
called the Laws of *St. Edward*.

At this time *Howel* made three Codes of Law.

The first, Of ordering the King or Princes Household and Court.

The Second, Of the Affairs of the Country and Commonwealth.

D

The

The Antiquity of National

The Third, Of the special Customs belonging to particular Places and Persons, which being approved by a general Council were proclaimed and writ in three Books, for publick Use.

ELDRED, Brother of King *Edmund*, was King during the Minority of *Edwin*, Son of King *Edmund*.

Eldred held a *Witenagemote* of the Nobles, in the Words of *Ingulphus*; *Rex Eldredus convocavit Magnates, (viz.) Episcopos Proceres & Optimates ad tractandum de publicis negotiis Regni.*

*Coke 9.
Rep. Pref.*

EDGAR, his Canons and political Laws are larger than any one of his Predecessors, which in the Preface are expressed to be made with the Consent of his *Wita's*, without any Epithet, which in *Latin* may be rendred, *consilio omnium Primatum*, both Spiritual and Temporal. This King was stiled *Pacificus*.

Wilkins 98.

At the end of *Edgar's* Laws in the *Cambridge MS.* is a Code of Laws or Canon stiled *Northumbrensum Presbyterorum Leges* but whether they were made by the King and his Nobles in general, or by the King and his Ecclesiasticks only, don't positively appear, but the Title of them makes it probable the Compilers were Ecclesiasticks. But on the other side, these Laws are in the

Saxon

Saxon Language and Character, and secular Laws made by Lords Spiritual and Temporal, were in the vernacular Language, whereas Canons or Laws purely Ecclesiastick, and made by the Bishops and Clergy, were generally writ in the *Latin* Language and Character; the learned Ecclesiasticks being the People chiefly concerned with them.

In the Year 957, in the *Witenagemote* Chron. held at *Bradenford*, now *Bradford* in *Wilt.* Sax. 117. shire, *Dunstan* was nominated by King *Edgar* to the See of *Wigeraceaster*, now *Worcester*, with the Approbation of the *Wita's*, M. S. Life of Saint *Dunstan*, and soon after in the same Manner to the See of *London*, and A. D. 959. to the See of *Canterbury* in like Manner, of which more will be said in the Chapter of the Power of Parliament.

ÆTHELRED the Unready, his Code *Archaion* of Law was made by the Advice and Con- 88. sent of his *Wita's* in his *Witenagemote* held at *Wodestock*.

The League between *Æthelred* and *An-* *Archaion* *lave* was made with the Advice and Consent 90. of the Nobles of each King.

The *Liber Constitutionum* was made by *Coke. 9. Rep. Pref.* King *Æthelred*, with the Advice and Consent of the *Wita's*, and at the general Council at *Wantage* in *Berkshire*, was made the second Part of the *Liber Constitutionum* by the aforesaid Authority.

Spel. Con.
Tom. 1.
513.

Wilkins,
102.

This King also held a general Council at *Ænham* in *Hampshire*, where Laws were made by him and his *Wita's*, thus expressed in the first Article, *Hæ sunt constitutiones quas Angli Optimates & Consiliarii elegerunt & edixerunt*, these Members must be Nobles only; for none but them have ever been by way of Eminence called the King's Counsellors, as the Barons of latter Days have been stiled *Consiliarii nati*.

Archaion
94.

Wilkins
125.

The *Senatus Consultum de Monticulis Walliæ*, is in the Preface expressed to be made with the Advice and Consent of the *English Wita's* and the *Ræd-boran* of *Wales* (i. e.) Counsellors, from *Ræd*, Counsel, and *Boran* born, that is, a Person born with the Honour to be a Counsellor.

Coke 9.

Rep. Pref.

EDMUND, surnamed *Ironside*, held a *Witenagemote* at *London*, in the *Latin Translation* termed *Conventus Sapientum Spiritualium & Temporalium*; and in another *Witenagemote* of his, the Preface is thus, *Hæ sunt institutiones quas Edmundus Rex & Episcopi sui, cum Sapientibus suis instituerunt apud Culincunam*.

Archaion
97.

CANUTE, tho' the Son of a Conqueror, and chosen King by the *Danish* Army, proved a good King, in whose time were two Codes of Law made at a *Witenagemote* held at *Winchester*. The first which is chiefly

chiefly Ecclesiastick, begins thus, *Consultum*, Coke Rep. 9. Pref. 6.
quod Canutus Anglorum, Dacorum & Norwegiensium Rex ex Sapientum Consilio ad Dei immortalis gloriam, Regiæ Majestatis ornamentum & Reipublicæ utilitatem, Natalitiis Domini nostri Jesu Christi diebus Vintoniæ sancivit.

And his Laws begin thus, *Hæc illa humana, atque politica sunt jura, quæ Sapientum* Archaion 107.
adhibito consilio, per omnem Angliam observari præcipio.

This King in the fifth Year of his Reign, Coke 9. Rep. Pref. 7.
 held a *Witenagemote* of Bishops, seven Dukes, seven Earls, many Abbots, *cum*
quamplurimis gregariis militibus, ac cum populi multitudine copiosa, &c. wherein the Abby of *Bury* was exempted from the Episcopal Jurisdiction of the Bishop of *Elmham*: What the *Populi multitudo* was, I shall give Account of in the Chapter of the constituent Members of the great Councils of the Nation.

EDWARD the Confessor, that great and good Legislator, reigned in the Hearts of his People; the Love, Harmony, and good Agreement between him and the great Council of the Nation, produced such Happiness between him and his People, as to be the Measure of the People's Desires, in all succeeding Reigns. The Law and Government of King *Edward*, being often petiti-

oned for, and strenuously contended for, by the *English* and *Norman* Barons.

The *Saxon* Terms, *Witenagemote* and *Michel-Synod* began in this King's Reign to be laid aside, and instead thereof, after the *French* and *Romance* Dialect, to be called Parliament, from *Parler la ment*, he having the greatest Part of his Education in *France*.

This King's Code of Law, was called *Lex Angliæ*, and sometimes, *Lex Terræ*; being a Collection of the best of the *Mercian*, *West Saxon*, and *Danish* Laws, and King *Edgar's* Laws.

The Code of Law, under the Name of King *Edward's* Law, as published in *Lambert* and *Wilkins's* Edition of the *Saxon* Laws could not be penned in his time, for in the 35th Law, there is *Rex Edwardus propinquus noster*, and in the Chapter of *Danegilt*, King *Edward* is made to say, the Church-Lands were exempted from paying *Danegelt usque ad tempus Willielmi Regis junioris*. And 'tis more than probable there was not any authentick Copy of his Laws in *William* the Conqueror's time, nor his Methods or Rules of Administration certainly known, for if there had, the Conqueror would have saved the Trouble and Charge of sending Commissioners into all the Counties of *England*, to enquire and make Report what were the Laws and Customs of *England* in King *Edward's* days, and

Inst. 110.

Daniel
fo. 22.

Edmer
171.

Archæion
149.

Ll. Ed.
Conf. 11.

and from their Report cause the Laws of his Kinsman to be drawn up. The great Officers of State, Judges and Lawyers had King *Edward's* Laws in such high Esteem, that most of them had Copies thereof, who making marginal Notes and Observations upon many of the Laws, after Transcribers, added the Notes to the Text; and so might come in the Account of *Rufus*, his charging the Church-Lands with *Danegilt*, which is true History, but no Part of the *Confessor's* Law: After this Manner might Pope *Eleutherius* his Letter to King *Lucius* be thrust in, which is not of such Antiquity, therein being a *Norman* Term, (*viz.*) *Manutene-
nere*, which is a *Norman Latin* Law Term, not known in *Eleutherius's* time. And of the like kind is the Account of the *Hustings*, being formed after the Manner and in Memory *Veteris magnæ Trojæ*: And farther in King *Edward's* 35th Law, is inserted that *William* the Conqueror, order'd *Thomas* Archbishop of *Canterbury*, and Bishop *Maurice*, to write down from the Mouths of the Commissioners their Report of King *Edward's* Laws, whereas there was no *Thomas* Archbishop of *Canterbury*, either in King *Edward's* or King *William's* time, nor no Bishop *Maurice* in either of their Reigns, till in the last Year of King *William*, (*viz.*) 1087. *Maurice* was Bishop of *London*.

The Antiquity of National

Hovedon.
603.

The most correct Copy of King *Edward's* Laws, are those in *Hovedon* and *Knighton*, who transcribed (as 'tis generally believed) from the MS. of *Ranulph de Glandvil*, or an ancient Copy of his MS. Yet, even there, is the before mentioned Account of *Danegilt* of *William Rufus*, which to be sure could not be put in by the learned *Glandvil*, but must be a Note or Interpolation after his time, put into his Manuscript.

In the Laws of *Edward the Confessor*, as published by *Lambert* and *Wilkins*, is a heap of fabulous ill-digested History, from the time of King *Lucius* and King *Arthur*, down to the time of *Henry the first*; yet 'twas King *Edward's* Laws that the Barons so incessantly petition'd for, in the time of the first *William*, and boldly fought for in the time of his Successors.

Therefore the Contest was for something more valuable than his written Laws; (*viz.*) It was to be under the just and moderate Laws of the *Saxon* Kings, of which *the Confessor* was the last, whose Administration was according to the good old *English* Laws, without arbitrary Power, without arbitrary Resumptions and seizing of Freemens Estates: 'Twas his moderate legal Administration that the Barons so strenuously contended for. The *English jus innatum in meum & tuum*, the common Law of Right, which

Daniel.
fo. 43.

which flourished in the *Saxon* times, and so executed in one Part of the Nation after the *Mercian* manner, in others according to the *West Saxon* and *Danish* Practice; which several Forms all had the same View to Right and Justice, which three grand Forms were by *the Confessor* reduced into one, and became common Law to the whole Nation, the differing Penalties being ascertained.

During the time of the Kings of the Heptarchy and of the *Saxon* Monarchs of *England*, Laws were not committed in Rolls to the Custody of proper Officers for keeping Records, in certain appointed Places; the Ministers of State, Judges and Monks, who were several of them learned in the Laws, and Advocates in Trials, took Copies of the *Saxon* Statutes for their own Use and Direction.

Andrew Horn, who writ *the Mirror of* Chap. 1.
Justices in *Edward I.* time, says, the Sect. 3.

Saxon Statutes were not very current, because they were not put into Writing, and certainly published, as in his Chapter of the first Constitutions, made by the ancient Kings: Yet in his Chapter of Appeals of Reason, he has these Words, (*viz.*) Treason- Chap. 2.
is set forth in Appeals in this Manner, Sect. 13.
according as it is found in the Rolls in the time of King *Alfred*. To put this Inconsistency into some tolerable Light;
Horn

2 *Inst.* 489. *Horn* made his Collection from Manuscripts and made Additions of his own, and treats of *British* Laws as high as the *British* King *Arthur*; and where he says, how Treason is set forth in the Rolls of King *Alfred*, he speaks in the Words of the Authors of some of his old Manuscripts, who might have seen either Rolls or historical Accounts of *Alfred* and ancient Kings, tho' in *Horn's* time there were no such written Rolls upon Record, and *Horn* don't distinguish what he transcribed out of Manuscripts from his own Additions.

Buchanan
218.

The ancient Laws of *England* that have escaped the rust of time, are transmitted to modern times by the Monks: In the Abbeys of Royal Foundation, one or more of the Monks were appointed to be Historiographers or Scribes, whose Business it was to register all new made Laws, with the Additions or Alterations made of the old ones, and to enter all notable Occurrences of every King's Reign; and at the Death of every King, these Chronologers, or Annalists, were to exhibit their Collections before the new King, in the first *Witenagemot* of his Reign, where a Committee of the most learned Men were appointed to examine and correct those Registers; after which Correction, the King ordered them to be fairly engrossed and kept with the Archives of the Monastery where the Collection

ection was made; and from that time they were esteemed authentick History, Chronicle, or Annals; and from hence it is that in modern Historians we so often meet with Citations out of the Registers of *Canterbury*, *Ely*, *Abingdon*, *Glassenbury*, &c.

In the *Welch* Monasteries were Annals collected, corrected, and kept. *Caradoc* Monk of *Lancarvan* in our King *Stephen*'s time, collected the Successions and Acts of the *British* Princes after *Cadwaladar*, to the Year 1156. There were several Copies of these Collections kept in the Abbies of *Conwey* and *Stratflure*, which were yearly augmented with the current History of the Year; and every third Year the Historiographers of the Abbies met at one of the Abbies and compared their Collections, and after Debate and Conference, fair Copies drawn and added to the Prior Collections. This Order of collecting, correcting and registering continued in those Abbies to the Year 1270; many Copies of this Register were taken, and translated into *English* by *Humfrey Lloyd*; which History reaches from *Cadwaladar* to *Llewlewyn ap Gryffith* the last Prince of *Wales* of the *British* Race, who lost his Life and Principality to *Edward I.* in the Year 1282.

Hist. Wales
Preface.

In the Preface to the History of *Matthew Paris*, it is said that in each mitred Abby of the Order of *St. Benedict*, some Monks of

of Care and Ability, were appointed to register all notable Matters as occurred in the Kingdom; and after the Death of every King, the Memoirs of the Monks were laid before a general Chapter of the Order, to be corrected and reduced into a body of History of the Time, and then fairly engrossed in Books to be preserved in the Archives of the Abbies for the Instruction of Posterity.

In the general Plunder of the Abbies at the Reformation, most of the monastick Registers were lost or destroyed and with them dropt a great and valuable Part of the Annals of the *English* Church and State.

The Monasteries being sold or granted to Laymen, but few of them had a Taste to Learning, sufficient to make them careful to preserve the Registers of the Houses they took Possession of: The few Abby Books that were preserved have been great Helps to Antiquaries and Historians; 'tis from the monkish Historians that the Moderns have collected their Accounts of ancient times.

Lled. Conf.
17.

From the Chronicle of *Lichfield* we have an Account of King *William's* confirming the Laws of King *Edward* in his Parliament of Barons held at *London* in the fourth Year of his Reign, as they were reported to him by his Commissioners sent into each County; one of them is a self-denying Law

in these Words, (*viz.*) *Rex quia vicarius summi regis est, ad hoc est constitutus, ut regnum terrenum & populum Domini, & super omnia sanctam veneretur Ecclesiam ejus, & regat, & ab injuriis defendat, & maleficos ab ea evellat. Quod nisi fecerit, nec nomen Regis in eo constabit, verum testante Papa Joanne nomen Regis perdit.* If King William then intended to govern England despotically, he surely would not have confirmed this Law.

In the last Year of King William's Reign he published a Code of Law of his own, and to make it go down glibly and be agreeable to the People, the Title is, *Hæ sunt leges & consuetudines quas Willielmus Rex concessit universo populo Angliæ post subactam terram. Eadem sunt quas Edwardus Rex cognatus ejus observavit ante eum.*

These Laws Ingulphus Abbot of Crowland carried to his Abby, there to be preserved in the Archives.

The ancient Lawyers Glanvill, Braeton, Fleta, Thornton, Hengham, Horn, Britton, &c. were beholden to Abby Registers in a great Measure for the old Saxon Statutes.

The ancient Laws and Customs of the Saxons, being revised by Edward the Confessor and his Parliament, those that were obsolete were rejected, and the useful retained and put in practice, as the Statute
Laws

The Antiquity of National

Laws of *Edward the Confessor*, which being made before time of Memory, past for the common Law of the Land, from *William* the first to King *John's* time, when the Barons prevailed with the King to have the good old Laws, to be drawn up in Form of a Charter, which the King confirmed, and so did his Son *Henry III.* *Edward I.* and succeeding Kings.

Ethelbert collected such *British* and *Saxon* Customs, as he with the Advice of his *Wita's* judged useful to his Kingdom of *Kent*, the other Kings of the *Heptarchy*, received *Ethelbert's* Digest of Laws, and some of them made Additions: *Alfred* Monarch of the whole Nation, revised the Laws of former Kings, and with the Advice of his *Wita's*, made a Code of Law to be common to the whole Nation: King *Edward the Confessor*, revised the Laws of his Predecessors and from *West Saxon: Mercian* and *Danelaw* with the Advice of his Parliament collected his Code of Laws, but all these Codes of Laws were but Shells or Cases of Law, the Practice and Manner of putting them in Execution being a much greater Part of the Law than the Text, and those short Heads of Law being put in Execution by the Aldermen and Reeves of the several Counties, which being separate Jurisdictions, independant on each other, caused great Variety in Decisions and

Judgments;

Judgments; and these local Laws, by the Wisdom of the Legislature and Learned, and just Judges have been improving and growing more uniform through many Ages before the Law arrived to that Beauty and Perfection, that with Admiration we now behold and justly adore: The Foundation is ancient and small, but by the Wisdom of Ages grown broad, so strengthened and enlarged as to be the strongest Fort in the Universe, against absolute Power, and seditious popular Tumults. The Foundation of this useful and beautiful Pile, was first laid and begun by the Companions of the *Saxon* Chiefs or Captains, who were afterwards called Countees, from sharing with their Captains Portions of the *Britons* Lands, afterwards called Counties; which they enjoying by original Contract with their Captains, afterwards called Kings, obliged them to observe such Laws and Customs as should be propounded and agreed in Council, they being Assessors to the King in the great Seignory, the grand Council of the Kingdom as their Vassals were to them in their lesser or subordinate Seignories. And as the Chiefs of the lesser Seignories made no Determinations without the Assistance and Concurrence of their Assessors or Suitors of Court; so the King made no new Laws or Determinations, upon the old Laws, without the Concurrence of his Countees, the Assessors

Assessors or Suitors of Court of his grand Seignory. This sort of Government, these Liberties and Privileges, the Barons in the first *Norman* Reigns incessantly contended to recover and have confirmed to them; the good old Law of *England*, as used in the times of the *Saxon* Kings, only called King *Edward's* Laws, as being used in his time, the last of the Race of *Saxon* Kings. His moderate and just Administration being much more valuable than the fabulous History transmitted to us with the Title of King *Edward's* Laws.

The Courts *de more* of the *Saxon* Kings were held according to Custom at the three great Festivals of the Year, when the Nobles always attended the Kings at their Courts of Residence from King *Alfred's* time. Then was the State of the Nation weighed and considered, old Laws altered, amended or repealed, and new ones made. This Court was also the supreme Court of Judicature, where the King with his Noblemen heard and determined Appeals from the inferior Courts of Justice, as before mentioned.

That the Nobility might be under a Certainty where the Courts *de more* should be held, King *William* the Conqueror fixed the times of his Residence, to be at his Palace in *Glocester* on the *Christmas* Festival, and at *Winchester* on the *Easter* Festival,

val, and at *Westminster* at *Whitsuntide*; at which Times and Places his Barons and Tenants in *Capite* attended in Courfe.

To this purpose Sir *William Dugdale* in his * *Origines Juridiciales*, gives us the * pag. 151 Words of an old Chronicle writ in King *Stephen's* time in the *Saxon* Language and Character, which speaking of King *William* the First, that Part that relates to this Subject, is translated by Sir *William* into modern *English*, (*viz.*) 'Also, he was a Person 'of great Worth (or Honour) thrice he wore 'his Crown, each Year, as oft as he was in 'England.' At *Easter* he bore it at *Winchester*, at *Whitsuntide* at *Westminster*, and at *Christmas* at *Gloucester*; and then were with him all the wealthy (or potent) Men throughout *England*, Archbishops, Bishops, Abbots, Earls, Barons and Knights; that is, Tenants in *Capite* that held by Knight-Service, all magnificently feasted and entertained: To these Feasts were invited foreign Ambassadors, Ministers, and Strangers, to see the King's State and Splendor.

At these times the King was mild, free and indulgent, and the Noblemen took such Opportunities to obtain Favours, whilst the King was in his Mirth and Gaiety, that might have been rejected at the Council Table.

At this time the Tenancies in *Capite* were large and consequently few in Number, so that the Nobles that sat at the Council Table

E

with

with the King were not numerous to an Inconvenience, as they were afterwards, when the great Tenancies were split into small ones as they were in King *Stephen's* and King *John's* time, of which I shall be more particular when I come to the Reigns of those Kings.

When Affairs of State required the Meeting of a Parliament between the Meetings of the Courts *de more* at the solemn Festivals, Summons went out, and in the Writs the Cause of the Summons expressed, whereby the Members were prepared, and knew before hand what Business they were summoned to consult and advise of. And this was expressly provided for in the great Charter of King *John*, in these Words, 'And furthermore we shall cause in general to be summoned by our Sheriffs and Bayliffs all others that hold of us in *Capite* at a certain Day and certain Place, forty Days at least before such time of meeting, in all Writs of such Summons we will declare the Cause of it.' And Summons being thus made, the Business mentioned in them shall proceed according to the Advice of such as shall be present, altho' all that were summoned come not.

Brady
Append.
132.

Cot. Posth.
45.

King *William* at his Coronation swore he would preserve the *English* Constitution: he and his Successors held their Courts *de more* here without Interruption, 'till the Wars between

Councils or Parliaments.

51

between *Maud* the Empress and King *Stephen*, made those regular Assemblies impracticable, which before were fixed in Custom Grace. Madox 10.

Henry II. and *Richard I.* their Reigns being more peaceable, the Bishops, Earls, and Barons *ex more* assembled; the King of course then revested with his Imperial Crown, the Bishops and Nobles assembling, in recognition of their preobliged Faith and present Service, until the times of King *John*, when the Wars between him and the Barons, made such Assemblies unsafe, and the Grace of Kings and the Nobility's Allegiance being interrupted, Parliaments met only upon special Summons.

William the Conqueror appointed Commissioners to enquire in every County of *England*, and make Report of what were the Laws and Customs of the Nation particularly in King *Edward's* time, and their Report was made in the Court *de more in concilio Baronum*, and there confirmed. King *William's* own Code of Law by the first Part of the Preface, looks like *Edictum Principis*, (viz.) *Ces sont les Lois & les Custumes que li Reis William grantut a tut le Peuple de Engleterre apres le Conquest de la Terre*; but then the Conclusion of the Preface is, that they are the same Laws that *Edward* the King his Cousin observed before him; and

MS. Part
cap. 4.

Archaion
139.

Edward's Laws were, as said before, made with the Advice and Consent of the Nobles; and farther, there is the universal Consent of all Historians, that the Conqueror's Code of Laws was made *in concilio Baronum*, which implies the Laws were made with the Consent, if not with the Advice of the Barons; but this Code of Law made in the last Year of his Reign, widely differed from the Report made by the Commissioners of King *Edward's* Laws drawn up into Form of Law in his fourth Year.

This Code of King *William's* Laws, seems to be more after the Manner of the Law in *England* that went by the Name of *Dane* Law, that, in the King's Judgment appearing most conducive to keep the People in Obedience and prevent Rebellions and Insurrections; and besides it was more of the Manner of the *Neustrian* Laws, than were the *West Saxon* or *Mercian* Laws.

Eadmer
171.

As to the civil Rights of the People, King *William* left them as he found them; they being in the time of the *Saxon* Kings, heard and determined in the Court Baron, Hundred, and County Courts, according to ancient Usage, which was confirmed by the King in his sixty third Law, in these general Words, (*viz.*) *Hoc quoque præcipimus ut omnes habeant & teneant leges Edwardi Regis in omnibus rebus, adauctis his quas constituimus ad utilitatem Anglorum.*

In

Councils or Parliaments.

53

In the Laws of King *William* there appear three principal Views.

The first plainly appears in his fifty eighth Law in these Words, *Statuimus etiam & firmiter præcipimus, ut omnes Comites, Barones, Milites & Servientes, & universi liberi homines totius regni nostri habeant & teneant se semper bene in armis & in æquis, ut decet & oportet, & quod sint semper prompti & bene parati ad servitium suum integrum nobis explendum & peragendum, cum semper opus adfuerit, secundum quod nobis debent de feodis & tenementis suis de jure facere, & sicut illis statuimus per commune Consilium totius Regni nostri, et illis dedimus & concessimus in feodo jure hereditario.* Note, this Law was made by and with the Advice of the common Council of the Nation (i. e.) the Parliament.

This Law settled his Militia in such an orderly and regular Manner, that he had always above sixty thousand Knights or Horsemen ready to serve him upon occasion.

A second Design that plainly appears in this King's Code of Law, is to enrich his Norman Companions and Assistants, that they might be the more able and ready to assist in suppressing Rebellions and Insurrections; and to make the Preservation of his Government their Interest, he made the Grants of Lands hereditary to them and their Heirs upon Condition of Service,

Faith and Obedience; and that they should be free from all unjust Exaction and from all Tallage; and that nothing should be demanded of his military Tenants but their Service according to their Tenure, as appears in his fifty fifth Law.

And that these his *Norman* honorary Tenants should be safe in their Persons from the Assaults of the *English*, the King ordained in Parliament that forty six Marks should be paid into his Treasury, by the Hundred, where a *Norman* was found killed: Of which you may see the Particulars in his twenty sixth and fifty third Law.

The third principal View that appeared in King *William's* Laws, tended to the Encouragement of Husbandry, for the Benefit of his military Tenants, that their Tenants should pay them due Rents and Services according to Custom and Contract, to enable those Knights to perform their Services to the King; and for Encouragement of the Soc-men, it was ordained by the King with the Consent of his Barons, that as long as the Soc-men duly paid their Rents and performed their Services to their Landlords, they should not be turned out of their Farms, as particularly appears in his thirty third Law, which Law brought Socage Tenure into some degree of Certainty and Freedom,

Councils or Parliaments.

55

King *William's* Charter wherein he separates the Ecclesiastical from the Temporal Jurisdiction, was made with the Advice of the Archbishops, Bishops, Abbots, Priors and Barons of the Kingdom, and in all his Reign he kept up a Shadow and Appearance of the old *English* Constitution; he stript indeed the *English* of their Possessions, when his *Normans* informed him that this and the other *English* Noblemen adhered to *Harold*; but as to his Acts of Legislature they were all made with the Consent of the Barons.

The first *William* being stiled Conqueror, I shall proceed to shew that his Reign was not carried on in a Manner of an absolute Conqueror, he holding the ancient Courts *de more* and Parliaments after the same Manner the *Saxon* Kings did.

In the first place at his Coronation he took the usual Oath the *Saxon* Kings did before him, (*viz.*) to protect and defend the holy Church, to govern the People according to the ancient Laws of the Realm, as used in King *Edward's* time, to do equal Right to all People, as well to the Poor as the Rich; and that he would be obedient to suffer Right as well as the People should be, &c. and the Barons in Parliament, were to determine all Complaints of the wrongful Acts of the King. Many *Norman* Laws and Customs were introduced in this King's

Mirroure:
cap. 1. §. 1.

S. Taylor.

56, 58.

Daniel.

73.75.101.

Reign, and in the Church some Novelties, not without the Consent of the great Ecclesiasticks, as Prayers for the Dead, and their Relaxation out of Purgatory, the Eucharist in one kind, the Worship of Saints, and some other Ecclesiastical Rights hardly known before in *England*; and considerable Alterations grew up in Fashions, military Discipline, Manner of living, Language, Writing, Fortifications, other Buildings, &c, and indeed with the *Normans* a good degree of Politeness invaded the Nation.

The County *Palatine* of *Chester* was a little Monarchy, within the great one of *England*: *Hugh Lupus* Earl of *Chester* created eight Barons, and held Parliaments of his own Barons and Tenants, and with their Advice and Consent made Laws for his Country of *Chester*.

To return to this King's Administration, it must be allowed that in the Beginning of his Reign, his *Norman* Assistants made whom they pleased Adherents to *Harold* and got possession of their Estates, and went farther in confiscating *Englishmens* Estates than his Intentions; he being imposed upon by the avaricious misrepresentations of his *Norman* Companions, which Grievances he redressed, as soon as well informed, how he had been misinformed and misguided.

Some

Some of his *Norman* Barons seized and got possession of Church-Lands, which the King being well informed of, he religiously determined, that the Lands of the Church were not held in Right of the Churchmen, but of the Church, and therefore could not be subject to Confiscation for the Churchmens adhering to *Harold*.

Odo Bishop of *Beyeaux* and Earl of *Kent*, a great Man and Relation of the King's, by misrepresenting *Stigand* Archbishop of *Canterbury*, got possession of twenty five Manors belonging to the Archbishoprick, whereof the King being informed, he ordered a Commission to be drawn, therein authorizing some Bishops and Lay-Barons to summon the Sheriffs to attend them at *Penendon-Heath* near *Aylesford* in *Kent*; where upon a full Hearing, the Commissioners determined the Manors and Lands to be restored to the Archbishoprick.

Another such Commission was executed at *Kenetford* near *Newmarket*, where the Court ordered all Lands to be restored to the Abby of *Ely*, that they, the Abbot and Monks, or their Predecessors were possessed of at the Death of *Edward the Confessor*, whether they were in the Hands of *Normans* or *English*.

And the King granted a Commission to reinstate the Ecclesiasticks of the whole Nation in all the Lands they enjoyed in *Edward the Confessor's* time.

In

In the next place I shall show that the People of the Laity, had the Benefit of the old *English* Laws and the King's Justice, in restoring the *English* to their Estates that the *Normans* had unjustly dispossessed them of.

Hist. Com.
Law. 96.

S. Taylor,
65.

Wilkins
213.

Sylas Taylor, Judge *Hales*, and many other modern Historians of great Judgment and Credit, give Instances of Recoveries of Lands out of the Possessions of the *Normans*, that had made unjust Entries upon *Englishmens* Lands. The Rights and Inheritances of the *English*, *qua tales*, were not abrogated or impeached by King *William's* Conquest of *Harold*, for tho' it was *jure belli quoad Regem, sed non quoad Populum*. Of which the Case of *Warren* the great *Norman*, one of the joint Undertakers with Duke *William*, and *Sherborn* of *Sherborn* in the County of *Norfolk* is one Instance out of many recorded in *Domesday*.

The Castle of *Sherborn* was granted by *William* to *Warren*, yet upon the Allegation of *Sherborn* to the King, that he never did bear Arms against him, but was his Subject as well as the other, and held his Lands by that Law that the King had established amongst all his Subjects; the King gave Judgment that *Sherborn* should be restored to his Lands, and hold them freely of *William de Warren*.

And the King gave a general Order that all such as stood Neuter, should be restored to the Lands they had in King Edward's time, with this only difference, that where- as in the Confessor's time they were *alodium*, they should be held freely of the Norman Lords, and the Persons restored should be called *Drenges*, *Tbrenge*s, or *Thegnes*; (i. e.) Knights or Gentlemen that held Manors of a superior Lord.

Somner
Gavel.
127.
Gerv.
Tilbury.

Gervase of *Tilbury* in his Dialogue of the Exchequer, and *Braeton*, both agree these *Drenges* were Freemen; and *Fleta* agrees with them in these Words, *Fuerint* *etiam* in conquestu liberi homines, qui liberi tenuerunt tenementa sua per libera servitia, vel per liberas consuetudines, & cum per potentiores ejeeti essent; postmodum reversi receiverunt eadem tenementa sua, tenenda in Villagio, &c.

Madox.
Bract. lib.
1. cap. 11.
Fleta lib.
cap. 2.

Dr. Brady says the Account of *Sbarnborn* being restored to his Lands by King *William*, is a famous Legend and trite Fable; for says the Dr. no Person is recorded in *Domesday* to hold any Lands in *Sbarnborn* but *William de Warenn*a; be it so, yet *Sbarnborn* was restored to the Possession and Profits of his Lands as before, tho' *Warren* was recorded in *Domesday* to be chief Lord, and *Sbarnborn* held them freely of him; tho' the Dr. calls *Sbarnborn's* Case a Fable, yet in his History he mentions such like Restitutions to be made.

Brady's
Tracts,
11, 12, 270.

Brady,
140, 187.

Wilkins,
213.

William

The Antiquity of National

William Rufus hath no Place amongst the Legislators, at his Parliaments of *Winchester* and *Rockingham*, he made fair Promises to put the Government upon the same Basis whereon it stood before his Father's coming into *England*, and to govern according to the old Laws of *England*; but how well he kept his Promise, is out of the Intend of my Essay, to enter into the Detail of; only in general that Law lay asleep in his time; he governed according to his own Will, and Money governed him; he postponed Elections to Bishopricks and Monasteries, to bring their Revenues into his own Coffers.

H E N R Y I. summoned *Clerus Angliæ & Populus Universus*, says *Mat. Paris*, to his Coronation; and his Laws begin in these Words, *Henricus Dei Gratia Rex Anglorum, Omnibus Baronibus & fidelibus suis Franciæ & Angliæ Salutem. Sciatis me Dei misericordia & communi consilio & assensu Baronum Regni Angliæ ejusdem Regni Regem coronatum esse, &c.* that is, was unanimously elected King, or his Accession to the Crown recognized by the Barons; tho' the Commons, as *Paris* says, were summoned to his Coronation, the Advice and Consent is appropriated to the Barons only.

His great Charter of Confirmation of Liberties, the Laws of *Edward the Confessor*, together

Archæon
156, 175.

Daniel fo.
60.

Eadmer
55.

Archæon
157, 176.

together with the Additions made to them by William I. concluded with *Testibus Archiepiscopis, Episcopis, Baronibus, Comitibus, Vice-Comitibus & Optimatibus totius Regni Angliæ apud Westm. quando coronatus fuit.* Daniel fo. 66.
He kept the Courts *de more* at the Places his Father settled, but to please the People made Progresses and resided at several other Palaces.

This Charter was transcribed, one for every County, and each Duplicate sealed, and one sent to be preserved in the chief Abby of each County; and it seems the *Viccomites* of the several Counties were attending to lay out the Charters according to Order. His Code of Law has been interpolated by After-transcribers, as appears by the marginal Note to his fifth Law, as appears in the *Decretum* of Gratian, or else they are of latter Date. Laws were made in two other Parliaments of this King, besides that in which he was crowned, with the Advice of Bishops, Earls and Barons. Tit. Hon. 702. Archaion 179. Daniel fo. 66.

KING STEPHEN's Reign affords little Matter for a History of Parliament, he was elected King, and the Bishops swore Fealty to him so long as he should preserve the Liberty and Discipline of the Church. He took an Oath to govern according to Law but soon broke it. Brady 273. Daniel fo. 69. Vide K. Stephen fo. 57.

HENRY

Wilkins
318.

Daniel fo.
79, 90.

Brady 326,
378, and
Postea.

Brady Ap.
41.

Hift. Com.
Law 138,
145.

Rapin N^o.
32. p. 243.

Daniel
fo. 83.

Daniel.
fo. 67.

HENRY the Second, Sirnamed *Plantagenet*, in a Parliament of Bishops and Barons, confirmed *Henry I.* his Charter of Liberties. At his Coronation he took the usual Oath from *Theobald* Archbishop of *Canterbury*; he reigned during his Mother's Life thirteen Years. His Parliaments of *Westminster*, *Clarendon* and *Northampton*, are very particularly mentioned in the Registers and Historians of those times, being called to redress the many Complaints of the Commons, against the Outrages and Exactions of the Clergy. Complaint being made to the King of above a hundred Murders committed by the Clergy, without any Punishment inflicted on them by the Archbishop or his *Suffragan* Bishops. Wherefore by the Statutes of *Clarendon* he restrained the exorbitant Power of the Ecclesiasticks, and the Exemption they claimed from secular Jurisdiction; of which I shall be more particular in the Second Chapter.

In the time of the two *Williams*, the King's Rents were paid in kind to the great Inconvenience of the Tenants that lived remote from the King's Court of Residence. In *Henry I.* time these Provisions were rated at certain Prices, and most of them paid in Money by Consent of Parliament; and as Money was more plentiful in *Henry II.* time it became near universal to pay Rents in Money.

RICHARD

RICHARD I. held five Parliaments of Bishops and Barons, but no Statute Laws made in his time are found either in Rolls or History; but many Edicts and Constitutions were by him made without any mention of Bishops and Barons Advice or Consent; he made naval Constitutions, and several Affizes, and raised Aids and Taxes without Authority of Parliament, tho' at his Coronation he had sworn, to observe the old Laws, and make good new ones.

Inspecti-
ons of
Long Par.
21.

Hist. Com.
Law 7.

Brady 421.

King *Richard* had two elder Brothers, who dying without Issue in the Life time of their Father *Henry II.* he prevailed upon his Parliament to confirm the Succession upon *Richard* his third Son, willing to get parliamentary Sanction, to supply the Deficiency of his Birth; for his Mother *Eleanor*, before she married King *Henry*, had been married to *Lewis VII.* King of *France*, who was living when *Richard* was born: *Eleanor* was divorced from *Lewis*, *causa Adulterii*, which not being a Divorce *a vinculo Matrimonii*, she could not by the Laws of *England* marry another Husband in the Life of *Lewis*.

Richard instituted a Body of naval Laws at his Return from the *Holy Land*, in the Isle of *Oleron*, as Sovereign Lord of the Seas, from the *British* to the opposite Coast.

More Clau.
386.

He constituted divers Rules for the Proceeding of his Justices in Pleas of the Crown.

Orig. Jur.

Hoveden
774.

Crown, and made an Affize of Weights and Measures, which was afterwards confirmed by *Magna Charta*.

Edit. Savil.
Brady 420.
448.

He made several Constitutions that chiefly tended to the filling his Exchequer, as the Affize of Weights and Measures, which yielded much from Forfeitures and Penalties levied; he ordered an Inventory of Escheat Lands: *Geoffry* Bishop of *Ely* dying intestate, he seized his Estate, which amounted to 3000 Marks in Silver and 200 Marks in Gold, besides Plate and Jewels; he had an Inventory made of Rents of Affize, of Wards and such like, from whence any Profit grew: he gave strict Articles of Enquiry to his chief Justice of the Forests. Besides Loss of Eyes and privy Members for great Offences; great Penalties were levied for lesser ones.

Brady 447.

His Affize for Tilts, Tournaments and Feats of Arms was also made with the same View, to bring Money into his Treasury. By Charter he gave a Sanction to Tilts and Tournaments, and ordered the Practice thereof in *England*, and yet they were not to be performed without the King's Licence, for which each Combatant was to pay the Royal Collector thereto appointed, according to the Affize set by the King, (*viz.*) an Earl was to pay twenty Marks of Silver, a Baron ten, a Knight that had a Knight's Fee in Lands four Marks, and a dubb'd Knight

Wilkins,
348.

Cot. Posth.
62.

Knight that had no Lands two Marks, and no body was allowed a Tilting, till he had obtained the King's Licence, and paid for it according to his Degree.

With the same View of Profit after his Chancellor was drowned and with him the Broad Seal lost, he caused a new one to be made; and all Charters or Confirmations of Charters made in the first Year of his Reign, were ordered to be brought to be renewed by his new Seal, for which he made People fine at his Pleasure.

Over and above the aforesaid Methods of filling his Exchequer, he raised several large Aids and Taxes, in the two Years 1195 and 1196; he raised five Shillings upon every Hyde or Carucate of Land to be paid within those two Years, which amounted to eleven hundred thousand Marks of silver, which was more than five Millions of present Pounds *Sterling*; and these great Aids and Fines were some levied upon the people by Power of his Royal Authority only, and some with Advice and Consent of Parliament, as in his Parliament at *Nottingham*, two Shillings out of every Plowland.

The *Norman* Kings raised Aids and Taxes upon their Tenants in ancient Demean, without Consent of Parliament, those Tenants being subject to Tenure Payments *ratione tenuræ*; and uncertain Sums were often demanded and paid.

F

The

The Tenants in ancient Demean were not liable to Parliament Taxes, they paying Aids to the King *ratione tenuræ*, which they looked upon as a Privilege, being not charged so much as the People in general that were taxed by Parliament; and these Demean Tenants were not only exempt from parliamentary Taxes, but also from Attendance in Parliament, in regard of their not being interrupted in tilling the King's Lands, which yielded Rent for the Maintenance of the King's Household; but when the Kings extended their Prerogative so far as to levy exorbitant and unreasonable Taxes upon their Tenants, it became a general Grievance, and in some Measure redressed by King *John's* great Charter of Liberties, and more effectually by the Statute of the Twenty Fifth of *Edward I.* Chapter vi. and by the Statute *de Tallagio non concedendo* of the Thirty Fourth of *Edward I.* wherein is enacted in these short Words: No Tallage or Aid shall be taken or levied by us or our Heirs in our Realm, without the Good-will and Assent of Archbishops, Bishops, Earls, Barons, Knights, Burgessees and other Freemen of our Land.

Tit. Hon.
797.
Baronage
233.

KING JOHN, (called *Lackland*) in the Second Year of his Reign held a Parliament, wherein was determined the great Controversy about the Barony that *William Mo*

bray claimed against *William Stutvil*, *consilio Regni & voluntate Regis*, says *Hovedon*.

In the Fifth Year of his Reign, *conven-
iunt ad colloquium apud Oxoniam Rex &
Magnates Angliæ*, says *Matthew Paris*, and
in the same Year a Parliament was held at
Winchester. In his sixth Year a Parliament was
holden, and the Children of the Barons were
required by the King's Ministers for Hostages.

At this time the King's Army was sup-
plied by Knights that held Knights Fees of Cot. Post.
14.
the King in *Capite*, who were allowed to
infeoff their Followers with such Part as
they pleased of their own Portions; and
Money and Provision was assessed by Hydage
on the common People, with the Consent
of their Lords, who held in all their Seigno-
ries such arbitrary Right of Regality, that
to their Vassals (as *Paris* says) *quot Domini,
tot Tyranni*, and proved to the King so great
a Restraint and Curb of his Power, that it
was the King's great Care to curb and re-
trench the Force of that *Aristocracy* that was
like in time to overthrow the Monarchy.

Though former Kings had foreseen this
growing Danger betimes, yet none attemp-
ted a Remedy till this King, whose over-
hasty Undertaking of it brought upon him the
Barons Wars, together with his refusing to
confirm *Henry I.* his great Charter.

The Barons being thus exasperated, un- Brady
494
der a Pretence of Prayer and religious Per-
formances

formances, met at *St. Edmund's Bury*, where they combined and agreed to force the King to confirm the great Charter of *Henry I.* which the Barons had received from *Stephen Langton* Archbishop of *Canterbury*.

In the Year 1215, the King keeping his *Christmas* at the *New Temple* in *London*; thither came the Barons to the King in their military Habits, requiring of him to confirm the Laws of King *Edward* and the great Charter of *Henry I.* The King surprized at their Manner of appearing before him, demanded time to answer till the Close of *Easter*; many things were proposed on both sides, and at length the King found Sureties, the Archbishop of *Canterbury*, the Bishop of *Ely*, and *William Martial* Earl of *Pembroke*, that at the Time prefixed he should with Reason satisfy them all; upon which the Barons and great Men returned home for that time.

Brady 495. In *Easter Week* the Barons and great Men met at *Stamford* with Horse and Arms; and having drawn into their Party almost all the Nobility of *England*, made up an Army of two thousand Knights, besides other Horsemen and Foot, all well armed.

Daniel fo. 142. At the same time the King was at *Oxford*, waiting for the coming of the great Men; on the *Monday* after *Easter* the confederated Barons rendezvouzed at *Brackly* in *Northamptonshire*, to whom the King sent the

the Archbishop, the Earl of *Pembroke*, and other wise Men, to know what Laws and Liberties they desired to have confirmed: In answer to the Message the Barons delivered a Schedule containing their Demands; affirming that if the King would not confirm the ancient Laws and Customs therein specified, they would compel him by seizing his Castles, Lands and Possessions; which Demands were so exorbitant and the Threat so insolent, that the King absolutely refused to comply with them.

Whereupon the great Men chose *Robert Fitz-Walter* their General, calling him the Marshal of the Army of God and of the Holy Church, and then marched to *Norhampton*, and by the way of *Bedford* to *London*; from whence they sent Letters to the Earls, Barons and Knights that adhered to the King, that if they would not desert the perjured King, and join with them in asserting their Liberties, they would proceed against them as publick Enemies.

Daniel fo.
143.

These Threats drew from the King the Barons that had adhered to him, which defection left the King hopeless, and induced him to send *William* Earl of *Pembroke* and other faithful Messengers to let the considered Barons know he would grant them the Laws and Liberties they desired: Upon which a Meeting of King and Barons was agreed to be on the fifteenth of *June* 1215.

Brady 496.

Hist. Com.
Law 3.

Daniel fo. 143. at *Running-Mead* between *Staines* and *Wind-
for*, where a Conference began between the
Barons that adhered to the King and the
confederated Barons, who were so superior
in Number to the King's Barons, that he
seemed to make no Difficulty of granting
the Laws and Liberties demanded; which
was drawn up as the confederated Lords
thought fit, in two Charters, the Charter
of Liberties of great Charter, and the o-
ther, the Charter of the Liberties and Customs
of the Forest.

Brady 498. The King farther conceded that the con-
federated Lords should choose twenty five of
the most potent Barons to be Guardians of
the two great Charters, and to compel
the King's Justiciary, other Judges and Mi-
nisters, to determine and act according to
the Charters of Liberties, and even to compel
the King if he should repent of his granting
the Charters: And the King sent his Letters
Patents to all the Sheriffs to cause all to
swear Obedience to those Charters and A-
greements.

These Charters were highly esteemed
they comprehending the principal common
Rights of the Church, the Baronage, and
Commonalty, and seemed like to be a last-
ing Benefit, from the Authority the King
gave to the twenty five Barons to have
them duly observed.

But these Halcyon Days lasted not long, the King soon repented of his Confirmation of the Charters, and of the Authority he had committed to the twenty five Barons, and solicited the Pope to damn the two Charters; the Pope well relishing the King's Bribes, and always ready to embrace any Opportunity of incroaching upon the Rights of Princes or their Subjects, sent his Bull over with a Dispensation to the King and excommunicated the Barons; upon which they invited *Lewis* the Son of *Philip* King of *France*, under pretence of his being next Heir to the Crown in the Right of *Blanch* his Wife, Daughter to *Godfrey* Duke of *Britain*, *Arthur* her Brother being dead.

Daniel to
144, 145.

The Pope sent Letters to the King of *France* intreating him not to suffer his Son to invade *England*, which was become a Fief of the See of *Rome*: To which the King of *France* replied, that the Kingdom of *England* never was, nor is, nor never shall be, the Patrimony of *St. Peter*; and that King *John* could not give away the Kingdom without Consent of the Barons, who are bound to defend the same. From the King of *France*'s Answer, it may by Implication of Reason be thought, that he was of Opinion that King and Barons could alienate the Crown: *Philip* in expresse Words says that King *John* was never lawful King of

Daniel to.
146.

England, and if he were, he had forfeited the Crown by his murdering his Nephew *Arthur*, his elder Brother's Son; and if he was hereditary and lawful King of *England*, he could not alienate the Monarchy, and grant it to any other without the Consent of the Barons, who then were the only Members of Parliament.

Upon *Lewis's* Arrival at *London*, the Barons chose him King, he swearing to govern by the Laws of *England*, and they swore Allegiance to him; and he with the Barons made War upon King *John* to his Death.

Daniel fol.
147.

HENRY III. Upon King *John's* Death *William Martial* Earl of *Pembroke* Lord Marshal of *England*, calling together the Bishops, Earls, Barons, and great Men of the Kingdom, placed *Henry*, then an Infant of nine Years old, in the midst of them, and persuaded them to receive him for their King, he being wholly innocent of his Father's Faults.

Mat.
Westm.
275.

The Earl of *Gloucester* alledged, that it was not consistent with their Oath to *Lewis* of *France*, to which the Marshal replied, that *Lewis* neglected the *English*, to advance the *French*, and would be the Destruction of the Realm; and that he had broke his Oath which absolved them from theirs. With these and other Reasons, the whole Assembly

Assembly were convinced, and unanimously cried out, *Fiat Rex*, and accordingly crowned *Henry*, and soon after compelled *Lewis* to renounce all Pretences to the Crown, and return to *France*. At this time, it seems the great Men understood the King's breaking his Oath, to absolve them from their Oath of fealty, and in King *Stephen's* Time *Brady* 273. the Bishops swore fealty to him so long as he should preserve the Liberty and Discipline of the Church, as before mentioned.

Henry was crowned at *Gloucester* the 28th of *October* 1216. (*coram Clero & Populo*) says *Paris*, and took the Coronation Oath; and by the same Assembly of Lords Spiritual and Temporal *William Martial* Earl of *Pembroke* was constituted Protector and Governor of his Person and Realm.

The Protector sent Writs to the Sheriffs *Rapin* of the several Counties, to summon the *Nº. 16.* *Barons*, Knights, and Freemen to the County Courts to swear fealty, and commanded the Sheriffs to see the Charters of Liberties observed, and order'd the Justices Itinerant to give in charge King *John's* great Charters to King *Henry* in the Year 1223, being then 17 Years of Age, and in his third Parliament solemnly promised to maintain the Liberties of the *Barons* and People. *p. 285.* *Brady* 491.

In the Year 1225, in the 9th Year of his *Daniel fol.* Reign and 19th of his Age, he confirmed *151.* his Father's Charter of Liberties and of the Forest

2 Inst.
proc.
C. 10.

Forest under his Seal, and sent one into each County of *England*. And this Charter was witnessed by 31 Bishops and Abbots, and by 33 Lay-Barons, in his 4th Parliament.

Daniel fol.
152.

In the Year 1227. The King held a Parliament at *Oxford*, where he declared he was of full Age, and would take the Administration of publick Affairs into his own Hands; and by the Advice of *Hubert de Burgh* his Justiciary, he cancelled and voided the Charters he had confirmed, alledging that his Confirmations were made when he was in Minority, and had no Power of his Person or Seal: This was his 5th Parliament.

Daniel fol.
154, 155.

Hubert de Burgh's Advice so well pleased the King, that he made him Earl of *Kent*, which Advice, and the Reward he had for it, so highly displeased the *Barons*, that they never ceased from soliciting the King to degrade the Earl of *Kent*, which they obtained, and he was by the Consent of the King degraded in open Parliament. In his 6th Parliament in 1234, he held his 7th Parliament at *Westminster* to no purpose.

Brady 565.

In the Year 1237, the King being reduced to great Straits for want of Money, swore in Parliament to observe the great Charters, and thereby obtained a twentieth Part of Moveables.

Councils or Parliaments.

75

In the Year 1244, the King demanded an Aid, and to incline the Parliament to grant one, promised to renew, confirm, and intirely to keep the great Charter of Liberties he had sworn to.

Daniel
fol. 158,
160, 162,
166, 167,
169, 172.

In the Year 1252. King *John's* great Charters were produced in Parliament, which the King again confirmed in Consideration of a Subsidy.

In the Year 1253, the Parliament granted the King an Aid, in Consideration of his again confirming the Charters of Liberties.

In the Year 1258, on *April 10th Hoke* *Brady* 623. *Tuesday*, a Parliament met at *London*, which was called *insanum Parliamentum*, where great Heats and Debates arose between the King and Barons, about Grievances in general, particularly, that he did not observe the Tenor of the great Charters, that he raised to Dignities his half Brothers against Right and Law, and advanced to great Riches, Poictovins and other Strangers; amongst whom *William de Valence* advanced to the Earldom of *Pembroke*, was complained of for his great Pride and Insolence.

Daniel
fol. 175.

2. Inst.
226.
3 Inst. 2.

Simon Montford Earl of *Leicester* making his Advantage upon these Debates and Wranglings, complained very boldly to the King, appealing to the Parliament for Justice; upbraided the King that he promoted and enriched Strangers, and despised and wasted

Rapin
N^o. 17. p.
394. 431.

Brady 607. wasted his own People, neglected his Subjects that faithfully served him, as he had charged the King six Years before; That he had not performed his Promise of rewarding him for his Service and Expences in *Gascoigny*; to which the King answer'd, that he wou'd not stand to any Promise made to one that proved a Traitor: The Earl replied and told the *King*, he lyed, and were he not a *King*, he would make him eat his Words.

Daniel
170.

These Heats and Wranglings continued till the second of *May*, when the *King* adjourned the Parliament to the eleventh of *June*, then to meet at *Oxford*; but before the Adjournment, the Barons promised to procure him a common Aid, if he would redress Grievances, and reform the State of the Kingdom according to their Advice: The *King* complied with the Terms, and granted that the State of the Kingdom should be rectified and reformed by twelve faithful Persons then chosen out of his Council, and twelve more to be chosen by the *Barons*, who should meet at *Oxford* at the time of Adjournment.

These twenty four had Power to choose four that were to choose the King's Council, which was to redress and amend all Matters appertaining to the King or Kingdom.

When the Parliament met at *Oxford* according to the time of Adjournment, the
King

King named his twelve, and the *Barons* chose their twelve. These twenty four chose four of their own Number who named the King's Council.

These twenty four great Men require the *Brady 627.*
King's Confirmation of the Charter granted by *King John* his Father.

Secondly, They required that such a Jus- *Rapin*
ticiary be appointed as would do Justice to *Nº. 17. p.*
such as suffered wrong, as well to the Poor *414, 433,*
as Rich. *443.*

Thirdly, That they should choose the Jus-
tices, Chancellors, Treasurers, and other
Officers and Ministers from Year to Year
for ever.

Fourthly, That they themselves or Friends
should have the Custody of the King's Cas-
tles.

Fifthly, By Edict they made it Capital
for any of what Degree soever, to refuse to
consent to these Things; and against such
the Archbishops and Bishops pronounced al-
so Excommunication.

These twenty four ordained, there should
be three Parliaments in a Year, one on the
Octaves or eight Days after *St. Michael*; the
second on the Morrow after *Candlemas*; and
the third on the first Day of *June*.

At these stated Times all the *Kings* cho-
sen Counsellors, *i. e.* Barons were to come
though they were not sent to.

And

And the Commons were to choofe twelve to represent them in thefe Parliaments, which twelve appear by the list to be all Bifhops, Barons, and great *Tenants in Capite*.

These were called the Provisions of *Oxford* sworn to by the King, Prince *Edward* and the *Barons*.

Brady 633.
Append.
223.

Writs were ifsued to four Knights of each County to enquire of Exceffes, Injuries, &c. of Juftices, Sheriffs, &c. by Juries and the four Knights, to make return of the Juries Verdicts under the Seals of the Knights and Jurors, the Knights to deliver the Verdicts in Parliament.

Brady 630.

The Barons purfuing the Power they had got by the Provisions of *Oxford*, put Governors into all the King's Castles, named and constituted Jufticiary, Chancellor and other great Officers, bound themfelves by Oath to ftand by one another, met in Parliament at the three times ftated in the Provisions, took to themfelves *Efcheats* and *Wards*, and gave to their Sons and Relations all Churches in the King's Patronage; which with other violent Actions raifed a War between them and the King, after he had in 1262. in Parliament, confirmed the Provisions of *Oxford*, and again in 1263, in which Year *Simon Montford* Earl of *Leicefter* with other Barons feized the King's Castles, and afterwards feized the King and Prince *Edward*.

In the Year 1265, the fourty ninth of Henry III. was summoned the famous Parliament of Lords and Commons, whilst the King was in the Custody of *Montford*, therefore called *Montford's* Parliament.

After the Battle of *Evesham* on the fifth of August 1265, the forty ninth of Henry III. wherein *Montford* was slain, the King's Affairs took a Turn to his Advantage; and by the Advice of Prince *Edward*, the King summoned a Parliament to meet at *Winchester* on the eighth of September in the same Year.

In the fifty second of Henry III. a Parliament of Barons only was held at *Marleborough*, where the great Charter was confirmed. The Members of this Parliament were such of the great Barons and Tenants in *Capite* as the King pleased to send Summons to.

This long Reign of fifty six Years was for the greatest part taken up in the settling the Bounds between the Royal Prerogative and the Subjects Rights and Privileges, confirming former Royal Charters of Grace and Favour, and cancelling and recalling those Charters of Confirmation: And in the Barons refusing Aids, and often refusing to come to Parliament till they had Royal Promises of Redress of Grievances and Confirmation of Laws and Liberties.

ED-

Brady 2.
Vol. 3.
Daniel
fol. 186.

EDWARD I. a brave, great, and high spirited Prince, is by all Historians extolled for an excellent Governor and good Legislator; he being in the Holy Land at his Father's Death, it was almost two Years before he came into *England*; on the nineteenth of *August* 1274, he and Queen *Eleanor* were crowned at *Westminster*.

In *October* following he issued out Writs to two Commissioners in every County, to inquire by twelve legal Men, what were his own Royalties and Prerogatives of his Crown, what Tenants he had that held *in Capite*, and Military Service; how many, and what Fees they held of him; how many Tenants he had in ancient Demean, how they behaved themselves, and in what Condition their Farms were. He also took care of the Subjects Rights, for the same Commissioners had Orders to inquire of Sheriffs, Coroners, Escheators, Bailiffs, &c. whether they had extorted Money from any Man by virtue of their Office, wronged any Man, or received Bribes.

At *Easter* 1276, he held a Parliament at *Westminster*, of Archbishops, Bishops, Abbots, Priors, Earls, Barons and Commons, wherein were made many excellent Laws, called *Westminster the first*, containing fifty one Chapters. The Commons were the small Tenants *in Capite* summoned in general by the Sheriffs.

In

Councils or Parliaments.

81

In succeeding Years many Parliaments were holden, and many good Laws made.

In the twenty third of his Reign, a Parliament was summoned to meet at *Westminster*, and Writs sent to the several Sheriffs of *England* to cause two Knights for each County, two Citizens for each City, and two Burgeses for each Borough to be at the said Parliament, to consent and agree to such Things as the Earls, Barons, and Peers of the Realm should ordain; from this Year is to be dated the first regular Summons of Knights, Citizens and Burgeses to Parliament. Parl. Summons 7.

In the twenty fourth of his Reign, the Parliament of *St. Edmund's Bury*, granted the King an eighth Part of the Goods of the Laity, and the Clergy a Tenth. Parl. Summons 13.

In the twenty fifth Year of his Reign, a Parliament was summoned to meet at *Salisbury* at the Feast of *St. Matthias*, when the King demanded the Assistance of his Earls, Barons and Knights that held in *Capite* 20 *l.* a Year to go in Person into *Flanders*, or contribute to the Expedition. *Humphry de Bohun* Earl of *Hereford* and *Essex*, and Constable of *England*, and *Roger Bigod* Earl of *Norfolk* and *Suffolk*, and Marshal of *England*, and many other Knights refused to go or contribute, unless it was ordained by common Consent in Parliament. The Debate between the King and the Marshal Baronage 135.
Brady 2 vol. p. 55.
Antiquity of Parl. 89.

G

grew

grew very hot, the King told him he should go and command his Army in *Gascoyn*, which the Marshal endeavour'd to excuse himself from, in decent Expressions, professing himself ready to attend and serve the King in Person in the Kingdom of *England*.
1 Hist. 69. as obliged by Tenure, and Allegiance, but
Bracton lib. 2. 36. was excused from being sent out of the
Daniel fol. 194. Realm by *Magna Charta*, Chapter *de liberis consuetudinibus*, which so enraged the King, that in his Heat, he said, By God, Sir Earl, you shall go or hang; to which the Earl replied, By the same Oath I swear, I will neither go nor hang, and went out of the Parliament-house without taking leave of the King. And then the King raised Taxes by his Prerogative; but the Marshal and Constable forbad the Barons of the *Exchequer* raising it, as contrary to Law, and it was not levied.

This Contest in Parliament made the King look upon *Magna Charta* to be too great a Curb upon the Royal Prerogative, he being forced to make his Expedition with mean Supplies, and little Assistance from his Barons and Knights; but before he returned from his Expedition, having duly weighed the Debate between him and his Parliament, and to avoid the Difficulties his Father and Grandfather labour'd under with their Barons, popularly made his Resentments submit to his Wisdom, and

at *Michaelmas* in the same twenty fifth
of his Reign, order'd a Parliament to meet
at *London* in his Absence; his Son, after-
wards *Edward II.* being appointed Regent,
and sent over from *Flanders* a Charter un-
der his Seal in Confirmation of the great
Charters, which Charter is mentioned in
the Statute-roll to be sealed at *Gaunt* in
Flanders on the fifth of *November* in the
twenty fifth of his Reign; and Duplicates
to be sent to all the Counties and all
Judges and Justices to observe the great
Charter, which was to be read in all Ca-
thedral Churches twice in a Year: And
Excommunication to be pronounced
against all Breakers of the Charters; and
the King declared the Aids and Taxes he
had raised without Consent of Parliament,
should not be made a Precedent, and that
for the future he would raise no Taxes
without the common Consent of the Realm:
Sir *Edward Coke* says, the Statute *de talla-*
gio non concedendo, was made in the thirty
fourth of King *Edward*, as it is in the old
Statutes printed by *Richard Totel*, 1556:
The Difference in Time between *Walsing-*
ham and Sir *Edward Coke* may be recon-
ciled, that of the thirty fourth of the King
being an Act made in Parliament; and that
mentioned by *Walsingham*, being by Char-
ter under the King's Seal as was the Con-
firmation of the two great Charters, in the

Parl. Sum-
mons 191

Daniel
fol. 196.

Brady
2 vol.
p. 59.

Walsing-
ham Hist.
Eng. p. 73.

2 Inst. 532.

twenty fifth Year, in which Charter was the Clause of levying no Taxes without Consent of Parliament; both Charter and Act of Parliament agree in point of Liberty, and Authors only differ in point of Time.

This Charter of Confirmation, and the Pardon for the Constable, Marshal, Lord *Ferrers* and their Adherents, so composed all Differences, that the Laity regranted the eight Part of their Goods they had before given at *Bury*, and the Clergy their Tenth.

Daniel
fol. 200.

In the Year 1300 the twenty eighth of his Reign, he passed those beneficial Laws, called *Articuli super Chartas*, where the great Charters are again confirmed, and three Knights chosen in every County, to hear and determine from Day to Day in a summary Manner, all Complaints against the King's Ministers, as well as others that had offended against the Great Charters, without allowing the Leisure and convenient Time taken in Proceedings at Com-

4 *Inst.* 186.

Spel. Gloss
543.

mon Law. These Commissioners were called Justices of *Trailbaston*, who executed their Commission so hastily, without taking due Time to hear and determine; that many of their erroneous Judgments were reversed in the *Kings Bench*; which by Degrees lessened the Credit of their Proceedings and Judgments, and they were wholly drop'd in the beginning of *Edward III.*'s

Time

Time; the last Commission of *Trailbaston*, that I have met with any where mentioned, being in the fourteenth of *Edward III.*

Statute Laws grew to a great Perfection in this King's Time, *Magna Charta* confirmed, and many new Statutes made, much to the Advantage of the People.

In 1326, the Parliament of *Westminster* assumed a most exorbitant Power, exhibited many Articles against *Edward II.* and in Conclusion, that he was not fit to govern; wherefore by unanimous Consent they agreed to depose the King, and elect his eldest Son *Edward* to be King: And the Archbishop of *Canterbury* makes a Sermon upon this Text, *Vox Populi, Vox Dei*, exhorting the People to invoke the King of Kings for the Prosperity of him that they had there unanimously chosen to reign over them. Some of the Barons and Commons were sent to the King, then imprisoned at *Kenelworth* Castle, to demand of him the Relinquishment of his Crown, which bitter Pill he being forced to swallow, thanked them for electing his Son. And *Trussel* a Judge, in Form renounced all Allegiance to the King to the eternal Reproach of him, and the Parliament that sent him.

Daniel fol.
217, 218.

There appears in the Records a Difference between a great Council and a Parliament. *Edward I.* in his twenty fourth Year, summoned *Magnum Concilium* to meet at *New-*

Parl. Sum-
mons 15,
39, 68,
124, 129,
217.

castle, tho' he had before in the same Year held a Parliament at *St. Edmunds*; and in his thirtieth Year he held a great Council at *Westminster*. *Edward II.* in the second Year of his Reign held a great Council at *Staufenford*, and another in the sixteenth Year of his Reign at *Rippon*, and at *Sarum* and *Winchester* in the eighteenth. *Edward III.* held several great Councils; the Summons to that of the ninth of his Reign, the Form to the Archbishop, has, *cum quibusdam aliis praelatis, magnatibus & proceribus dicti regni nostri colloquium habere volumus & tractatum*. Whereas the Summons to the Common Council of the Nation or Parliament, the Words are general, *cum cæteris praelatis, magnatibus & proceribus*. To the above said great Council were summoned besides Bishops, Abbots and Priors, only five Earls, and eleven Barons, and no Commons. But to his Parliament of the same Year, besides the Bishops, Abbots and Priors, there were summoned eleven Earls, fifty nine Barons, and twenty three Judges, Serjeants and King's Counsellors and Ministers, with the Barons of the Cinque Ports, Knights, Citizens and Burgeesses. The Summons to the great Council was by Privy Seal to particular Persons: The Summons to the Common Council or Parliament was under the Great Seal to all the Barons, &c. The Conclusion of the Writ to the great Council

Inst. 110.

Parl. Summons 179.
181.

Parl. El.
Synod 60.
Notitia
Parl.
XXVIII.
21.

was in these Words, viz. *Rex de avisa-
mento consilii voluit & mandavit custodi pri-
vati sigilli sui, quod literas seperales sub eo-
dem sigillo faceret Dominis prædictis diri-
gendas in forma prædicta.* The Writs of
Summons to the Common Council or Par-
liament was under the Great Seal to sum-
mon all Lords in general, and under the Pri-
vy Seal, to summon to a great Council on-
ly such as the King particularly mentioned.

C H A P. II.

*Decrees, and old Statutes, Magna Charta,
and Acts of Parliament.*

IN searching into the Antiquity of publick
Constitutions or Statutes, we can't find
any *British* Constitutions, the *Druides* who
were the Lawmakers amongst the *Britons*
never committing any to writing, instruct-
ing Youth in their Schools by Memory on-
ly, teaching them Religion and Law by fre-
quent Repetitions of their Laws both Sa-
cred and Civil; in which the *Druides* were
so learned, that the *Gauls*, says *Cæsar*, fetched
their Discipline from *Britain*.

From the old *Britons* to the *Saxon* first
Legislator *Ethelbert* of *Kent* being above five

*Bede lib. 2.
cap. 5.*

hundred Years in this long Space of Time, the *Britons* had no publick Constitutions, but what they had from their *Roman Masters*; the *Saxons* being in *Britain* above a hundred Years, before *Ethelbert* set about the Work of Legislature; his Laws were called, says *Bede*, *Decreta judiciorum*, and written in the *Englisch Saxon* Language, who to shorten his Work of Legislature took in to his Code of Law several *British* Customs; and many *British* Terms are in his Laws.

The Laws of *Ethelbert* are the ancientest Acts of Parliament, the next were those of *Lothar*, and *Eadric*, *Wigtred*, *Ina*, *Offa*, and *Alfred*; which last made Laws and Statutes for the whole Realm of *England*: He made a Collection of the best Laws of his Predecessors, which with the Addition made by him and his wise Men, go by the Name of King *Alfred's* Laws. Before I treat of the Laws made by King *Alfred* and his Successors that were Monarchs of the whole Nation, after the Heptarchy was brought under the Power of one King, I shall make a short Dissertation upon the three Codes of Law so often mentioned by the ancient Historians.

During the Continuance of the Heptarchy, Laws were made by *Ethelbert*, *Hlothar*, *Eadric* and *Wigtred* Kings of *Kent*, by *Ina* King of the *West-Saxons*, and *Offa* King of the *Mercians*, and no other Kings
of

of the Heptarchy made any Code of Laws that are preserved by Historians: If it be objected that none of the Kingdoms could regularly subsist without Laws suited to the Humours of the People and Situation of their Affairs; I answer, that the People of the seven Kingdoms were all of the same Race, and at first lived as Friends and Relations, united in one Bond of Alliance against the *Britons*; and those Kings that made no Laws in their Provinces, received and promulged in their several Kingdoms the Laws made by the other Kings that were Legislators.

But before *Edward the Confessor's* time, there arose a triple Distinction of Laws, viz. the *West-Saxon* Law, the *Mercian* Law, and the *Dane* Law, which were different Laws in the Mulcts; the main Substance indeed of those several Laws being the same, they differing from one another chiefly in Amerciaments, Mulcts and Fines, for the Transgression of one and the same Law, according to the local Custom and Usage of the several Provinces; and so it is to be understood in the Second Law of King *Alfred*, in the Case of such as violate Sanctuary, (viz.) *mulcta, vel ipsa capitae aestimatione, prout ejus gentis feret consuetudo*, &c. as the *Saxon* is render'd in Latin by *Lambert*. The learned Sir *Henry Spelman* says much to the same purpose, for

for tho' (says he) the Nation was divided into many Kingdoms, yet were they all in effect one both in Manners, Laws and Language; and the uniting the several Kingdoms into one Monarchy wrought no great Change in Laws, for tho' there were the *West-Saxon* Law, the *Mercian* Law, and the *Dane* Law, whereby the *West* Parts of *England*, the middle Parts, and those of *Norfolk*, *Suffolk*, and the *North* Parts were severally governed, they were much the same and alike in the Course and Form of administering Justice; the several Codes or Digests of Laws very little differing, but in the Measures of their Amerciaments, Mulcts and Fines, in *West-Saxony*, *Mercia* and the *Danes* Country. The *English* Fine called *Wite*, was 30 s. and the *Danish* Fine called *Lakslight* 12 Ora's, i.e. 20 s. the highest *Wite* was the King's *Wite*, called *Full-Wite* which was 20 Marks, which was 120 s. the Bishop and Earls *Wite* 60 s. the Thanes or Barons *Wite* 30 Solids.

Wilkins
433.

Ll. William
Con. 64.

Ll. H. I. 51.

Nicol. lib.
vo. 1. 112.

The learned Bishop *Nicolson* carries this Matter farther, he won't allow there were such three Codes of Law termed the *West-Saxon*, *Mercian*, and *Dane* Law; for he advances, that the Translators of the *Saxon* Laws mistake the *Saxon* Word *Laga* or *Lage* for the *Norman* Word *Ley*, i.e. Law. For says he, the *Saxon* Word *Laga*, should be render'd in *Latin*, *ditia* *five* *provincia*

a Country or District; and Instances in the Preface to *Ethelred's Laws* made (as in the original) æt ƳuberƳoce MƳpcena lanð æpƳetƳ Angla lage, which *Lambert* (says he) falsely translates *Wodstoci Mercia, quæ legibus Anglorum gubernatur*; whereas says the Bishop, *Lambert* should have render'd, *quæ postea ditio Anglorum*; he instances in a like Mistake made in the Translation of *Canute's* fourteenth Law, where on ðenalaga on Englalaga is render'd, *jure Dacorum & Anglorum jure*, which says the Bishop should be render'd, *intra ditiones Danicas & Anglicas*. In the thirty fifth Law of *Edward the Confessor*, occurs, erat *lex Danorum, Norfolk, Suffolk and Granta-*
Archaion 110.
brigesbire, quam (says the Bishop) *ab omni sensu alienum, pro Lex* (continues the Bishop) *itidem hic loci Ditio, sive provincia substituenda est.*
Archaion 119.

Tho' *Somner*, *Spelman*, and others learned in the *Saxon Language*, all agree that the *Saxon Word Laga*, imports Law, yet the Bishop may be as good a Judge of the *Saxon Language* as any of them; therefore I shan't pretend to make those Authors of greater Weight in the Case than the Bishop, but shall produce some other Laws wherein *Laga* cannot be the same with *Ditio*.

In the second Chapter of *Henry I.* his grand Charter of Liberties, are these Words, Archaion 176.
murdra

murdra etiam retro ab illo die quo in Regem coronatus fui omnia condono, & ea que modo facta fuerint iuste emendentur secundum Lagam Regis Edwardi; and farther on in the same Chapter, *Lagam Regis Edwardi vobis reddo, cum illis emendationibus quibus eam pater meus emendavit, consilio Baronum suorum:* The Reader, I conjecture, will not judge that the translating *Laga Law* in this Chapter is *ab omni sensu alienum*. If the Bishop had translated that Part of this Law relating to Murderers, I dare be bold to say he would not have render'd it, They shall be tried according to King Edward's Country: And in the latter Sentence (*Lagam Regis Edwardi vobis reddo*) I dare persuade my self that he would not have made the King so self-denyingly generous, as to give his People King Edward's County.

Archaion
180.

The sixth Law of Henry I. begins thus, *Regnum Angliæ trifariam dividitur in Britannos Britannia, in Westsaxam & Mercenos & Danorum provinciam: Legis etiam Anglicæ trina est partitio ad superiorem modum; alia enim Westsaxia, alia Mercena, alia Denelaga est.* The true Meaning of *Laga* here is so obvious as to want no Observation.

Dial. Scac.
30.

Hitherto I have produced only Laws to prove there were three Codes of Law in England, and shall conclude with one ancient Author, Gervase of Tilbury, who compiled

Councils or Parliaments.

24

compiled the black Book of the Exchequer in Henry II. time, in these Words, *propositis* (speaking of King William) *igitur legibus Anglicanis, secundum tripartitam earundarum distinctionem, hoc est Mercenlage, Westsaxonlage & Danelage, quasdam reprobavit, quasdam approbavit, &c.* from all which may be concluded, there were three Codes of Law amongst the Saxons, much the same in Substance, tho' remarkably different from one another in the Quantity of Amerciaments, Mulcts and Penalties, to which may be applied Ovid's Words,

————— *facies non omnis una,
Nec diversa tamen, qualem decet esse sororum.*

Alfred made his Code of Laws with the *Archaion* Advice of his Nobles in his Court *de more*; ^{22, 36.} wherein it is expressed that the King with the Advice of his *Wita's* revised the Laws of Ina, Offa, and Ethelbert; rejected such, as alteration of Time and Circumstances had render'd useless, and retained and enforced such as were judged useful and beneficial to the Nation; and this was before the triple Distinction of Law, for the Sword was the only *Dane* Law, till Guthron came to an Agreement with Alfred, and then grew up Customs in the *Danes* Country in some Articles different from the other Parts of England, which might properly enough be

be called *Dane* Law, as being the Custom and Usage in the *Danes* Province, so *Dan*alaga may be render'd *Dane* Law, (*viz.* the Custom of the *Danes* in their District) so I think *Laga* may be render'd Law properly enough.

Archaion.

38.

Wilkins 48.

Bede. lib. 2.
cap. 5.

Spel. Con.
Tom. 1.
pag. 127.

Edward the Elder in the Preface to his Laws, gives strict Command to his Judges to do equal Right to all People; according to the Book of Laws, there called *Dombec*, which *Lambert* renders in *Latin*, *Liber judicialis*, and so does *Wilkins*; whether this *Dombec* be the same that was made by King *Ethelbert*, and called by *Bede*, *Decreta judiciorum*, I won't venture to determine. To be sure, the *Dombec* mentioned by King *Edward* must be a Book of legal Doms or Judgments that was standing Law in his time; and the *Saxon Dombec* and *Bede's Latin Decreta judiciorum*, are so congruent; that in all probability they were the same, that is, the Doms and Judgments set upon Criminals by the Code of Law made by King *Ethelbert* and his Council of wise Men: The short Capitulars or Heads of Laws in that Digest, may properly enough be termed the Book of Doms, the whole Eighty Nine Capitulars being only so many Mulcts, Fines or Penalties set upon the Persons guilty of the Crimes therein marked for Punishment, and no civil Rights therein mentioned.

The

The Laws of King *Ethelbert* were of the nature of the modern Statutes or Acts of Parliament, they being made by the King with the Advice of his Bishops and Nobles assembled in common Council.

The next Code of *Saxon* Statutes was that of *Lothare* in conjunction with *Eadric* King of *Kent*, which in the Preface is said to be made with the Advice and Authority of his wise Men *i. e.* Nobles. *Spel. Con. Tom. 1. pag. 152.*

These Statutes contain Mulcts, Fines, and Penalties to be inflicted upon such as are guilty of Crimes and Offences, against God or Man. *Wilkins 7.*

The next *Saxon* Statute Laws were made in the fifth Year of the Reign *Wihfred* King of *Kent* at *Berghamsted*, with the Advice and Consent of his Bishops and Nobles, in Confirmation of the former Laws of *Kent*, with some Alterations and additional Penalties; and therein ordained that the Church shall be free and enjoy all its Rents, Revenues and Privileges, and that the King shall be duly honoured, and publick Prayers made for him in the Churches. *Wilkins 10.*

The next Code of *Saxon* Statutes were made by *Ina* King of the *West Saxons*, with the Advice of *Genred* his Father, *Hedde* and *Erkenwald* his Bishops and the rest of his Nobles. *Spel. Con. Tom. 1. 182. Wilkins 14.*

These Laws prohibit doing any secular Work on *Sundays*, that the Priests shall observe *Archaion.*

observe their Rules, that Infants be baptized within thirty Days after they are born; that the *Cyricseat* or Church-Rent be paid at the Feast of St. Martin, that he that is guilty of Manslaughter and flies to the Church and takes Sanctuary there shall save his Life, and he that deserves whipping shall be excused from Stripes. From this Law it appears that the Privilege of Sanctuary was so early allowed in the *British* Church.

This King's Laws consist of seventy seven Capitulars, which are too many to be particularly mentioned in my intended Brevity.

Offa King of the *Mercians*, was a Legislator as appears by *Alfred's* Code of Laws wherein the King says he collected them out of the Laws of *Ina*, *Offa*, and *Ethelbert*; but as there is no entire Code of his Laws transmitted down to us, I proceed to King *Alfred*,

Archæion
15.

Wilkins 28.

Spel. Con.
Tom. 1.
354.

Alfred made two Codes of Law, the one Ecclesiastical and the other Secular. His Ecclesiastical Laws begin with the Ten Commandments, which he enforces, and also several other divine Laws which he took out of *Exodus* and *Leviticus*, without any Assistance in the Laws expressed, from his great Ecclesiasticks. But his Secular Laws were made with the Advice of his Council of Spiritual and Secular Nobles which

which he commanded to be observed by all *Englishmen*, he being Monarch of the whole Nation.

This King's Secular Laws are Forty, and tho' he says he collected them out of the Laws of former Kings, yet there appears to be a great deal of new Law in his Statutes, which were very wholesome and good Laws, highly esteemed by the Nobility and People.

Noblemen and Gentlemen had peculiar Privileges appropriated to them, as appears by his thirty sixth Law, in relation to Breach of the Peace. The Fine for Breach of the Peace in the King's City or Town of his own Demesns, was 120 Solid, to be paid to the King; Breach of the Peace in the Archbishop's Town, was 90 Sol. to be paid to him; in a Bishop's or Alderman's Town 60 Sol; in a Twelfthindman's Town, that is a Man of twelve hundred Shillings in Estate; and so valued in the Laws of Head-money, the Mulct was 30 Sol. and in a Sixhindman's Town 15 Sol. The Bishops, Aldermen, and *Thanes*, had Towns of their own; and for Breach of the Peace there, being a Damage done to them or their Tenants, the Law was highly just in giving the Recompence to the Party grieved by the Offence. These Privileges, Noblemen and Gentlemen enjoyed till the time of the first *Norman King*,
H when

when Fines for Breach of the Peace were remitted into the King's Exchequer.

11. *Alfred*
37.

This King by Law entailed hereditary Land, therein called *Bocland*, that it could not be alienated out of the Family, which is an ancient Precedent of Estates in *Fee-Tail*, which Law was confirmed and enforced by *Edward I.* by the Statutes of *Westminster* the second, and continued Law till *Henry VII.*'s and *Henry VIII.*'s time. The curious Reader may see the Detail of *Alfred*'s wise Laws, in *Lambert*'s and *Wilkins*'s Editions of the *Saxon Laws*.

13. *Ed. 1. 1.*

Alfred made Peace with *Guthron* the *Danish* King, and a short Code of Law was made between the two Kings with the Advice and Consent of the Nobles of *England* and *East Anglia*; and in all Cases not provided for in that League, *Guthron* and his *Danes* were to observe *Alfred*'s general Laws of *England*.

Edward the Elder made a few Laws, chiefly commanding his Aldermen and Judges to observe the Rules in *Dombec* before-mentioned.

Edward confirmed the League made by his Father *Alfred* and *Guthron*, and that was enlarged by *Edward* and *Guthron*, with the Advice of the Nobles of both Kings.

Atbelstan in his Parliament at *Greatanly*, made many good Laws by the Advice and Consent of *Wulfbelm*, his Archbishop, his
other

other Bishops, Ecclesiastical Dignitaries, and Lay Nobility.

The most remarkable of his Laws are *LI. Albelston 14.* those of Mints, Larceny, Head-money, and Militia: He ordains that the Money throughout all *England* shall be of the same Standard and Weight; and if any Minter makes Money baser than the Standard or less than the established Weight, his Hand shall be cut off; and then ordains in the same Law, that there may be at *Canterbury* seven Moniers, four for the King, two for the Bishop, and one for the Abbot: At *Rocheſter* three, two for the King, and one for the Bishop: At *London* eight, and in other Cities and Castles in the Law mentioned, certain Numbers of Minters: And that no Money shall be coined in any other Places but in Cities, Burrows, or Castles.

The settling a Militia according to Mens *Archaion 50.* Estates in Land, is as old as this King's time; for his sixteenth Law commands that Land Owners shall have always ready two Horses well caparison'd for War, and Riders to mount them, for each Plow-land.

A Valuation was set upon every Man's *Archaion 55.* Head in his Laws, from the King to the Peasant inclusive. He that kills a Man, *Wilkins 71.* shall pay the Value of the slain Man's Head, as set in this King's Law: Punishments were mostly pecuniary at this time.

Wilkins 70.

In this Kings time, Laws were made at Greatly, Exeter, and at Thunresfeld: And the *Judicia civitatis Lundoniæ*, wherein the King commands with the Assent of his Nobles, that no Person shall suffer Death for a Theft where the Value of the Things stolen are under twelve Pence, which remains the Measure between grand and petty Larceny.

Sir J.

Prise, 53.

Orig. Jur.

54.

About the Year 940, *Howel Dha* King of *Wales*, held a Parliament of his Prelates, Nobles, and great Men of *Wales*, at his Palace called *Y Tŷ Gwyn ar Taf*, i. e. the white House upon the River *Taf*. There, out of the Members of that great Council, he chose a Committee of Twelve that had the greatest Experience and Knowledge of the Laws, to whom he added *Blegored*, a learned Doctor of the Laws; to this Committee he gave in Charge to draw up three Books of the Laws, which being laid before the King and Parliament, were approved and confirmed, and called the Laws of *Howel Dha*.

Archaion

57.

The next Code of Laws was made by King *Edmund* with the Advice and Consent of the Spiritual and Temporal Nobility at his Parliament held at *London*.

Therein it is ordained that he that breaks the Peace, and assaults one in his own House, shall forfeit all he hath, and his Life to be at the King's Mercy.

Then

Then a Law is made to prevent deadly Feuds and Methods prescribed to prevent them.

In Cases of Matrimony it is ordained, that the Widow shall have half her Husband's Estate, and if there be a Child between them, the whole, till such time as the Widow marry again.

Now I proceed to the Laws of King *Edward* *Archdion*
62. which, the Preface says, were made with the Advice and Consent of his Nobles.

He begins with the Privileges of the Church, and enacts that it shall enjoy all its Rights and Titles; that *Peter Pence* shall be duly paid, and that *Sunday* shall be kept holy, according to former Laws.

He begins his Secular Laws with ordaining, That equal Justice shall be done to all Men, as well to the Poor as the Rich, and that Fines shall be so moderated as to be suitable to the Divine Clemency, that they may be tolerable to Men, and that pecuniary Mulets for Crimes and Offences shall not exceed the Value the Law sets upon the Criminal's Head.

He ordains that Persons qualified shall attend the County Court, and that the Bishop shall there instruct the People in the Laws of God, and the Aldermen in those of Man, which is an ancient Precedent for our Judges and Justices Charges at Assizes, and Sessions of the Peace.

Wilkins 82,
98. Besides the Secular Laws, a great many Ecclesiastical Canons were made by this King.

Archaion
28. In King *Ethelred's* time were made two Codes of Law, one at *Wodestock* and the other at *Wantage*, and both with the Advice and Consent of the Nobility.

Wilkins,
106, 113,
119. In this King's time were made two Sets of Laws, called *the first and second Books of Constitutions*, which chiefly related to Ecclesiastical Affairs. And the general *English* Council of *Ænham* was also held in his time, relating to Ecclesiastick Matters.

Spel. Con.
Tom. 1.
pag. 510.
Wilkins
125. In *Ethelred's* time also was made a Code of Laws, to determine how Robbery and Manslaughter committed by *English* and *Welch* upon the Borders should be punished, which consist of Nine Capitulars, and the *Latin* Title is *Senatus-consultum de Monticulis Walliæ*.

Canute's Laws were made at *Winchester*, at the *Christmas* Festival in the Year of our Lord 1036. In the Preface it is said, this is the Law or Decree which *Cnute* King of all *England*, *Denmark* and *Norway*, hath ordained with the Consent of his wise Men, *i. e.* Noblemen, as well for the Maintenance of his own Royal Dignity, as for the Benefit of his People.

Ll. Canut.
54. It appears in this King's Laws, that Treason lay against the Lord as well as against the King; for says the Law, who-
soever

soever conspire against the King or his Lord, shall lose his Life and Fortunes, except he purge himself by the triple Ordeal.

In former times all Criminals might redeem themselves by paying Money to the King, their Lords, or the Persons offended or injured; but in this King's Law, breaking into Houses in that Manner and with such Intent, as modern Law terms Burglary, open Robbery, manifest, malicious or wilful Murder, and betraying one's Lord, are declared to be mortal Crimes, such as are not to be commuted by pecuniary Mulcts or Compensations. Ll. Cnut. 61.

This King relieves the Subject from their former Grievance of supplying the King's Household with Provisions in his Progresses and Country Residences, by enacting and commanding all his Officers, that they make Provision for his House out of his own Land and Tillage, and compel no Man to furnish him with Provisions, and that they impose and set no Fines upon such as refuse to deliver their Goods to the King's Use: And if any Royal Officer be convicted of the Offences aforesaid, he shall forfeit his Head-money, that is so much as his Quality or Degree is valued by the Laws. This was a beneficial Law to the Subject, of which they found the Comfort, till the *Norman* Kings arbitrarily took the Peoples Goods by their Officers, called (ac-

9. H. III. 19. cording to the *French* Purveyor; and the
 3. Ed. I. 7. Fuel, Corn, Victuals, and other Necessa-
 28. Ed. I. ries that they provided for the King's House
 21. Canut. 75. was called *Pourveyance*, which was one of
 the Grievances the Barons complained of,
 and was redressed by *Magna Charta*, *West-*
minster the first, *Articuli super Chartas* and
 other modern Statutes; but now I am come
 to them. I return to the Laws of *Canute*,
 who was a martial Prince, won the Crown
 by his Sword and kept it by Law; for he
 did not keep his Militia in regular Order
 by military Discipline of his own arbitrary
 Will, but by Laws agreed to in Parliament,
 as appears by one of his Laws to that Pur-
 pose.

If any Man in an Expedition at Land or
 Sea deserts his Lord or Fellow-soldier, he
 forfeits his Land to the Lord of whom he
 held it, besides his Life; and if his Estate
 be Bocland, be Freehold, hereditary Land,
 that shall be forfeited to the King. And
 farther it is provided in the same Law, that
 if any one die in Fight in the Presence of
 his Lord, his Heriot shall be remitted to
 him, and his Children shall succeed to his
 Lands and Goods, and those be equally divi-
 ded amongst them.

From this Law are three Things obser-
 vable.

First, That at the time of making this
 Law, the Militia of the Nation was found-
 ed

ded upon Tenure, from the Appropriation of the Forfeitures for Desertion; the Forfeiture of the great Lord, whose Lands were subject to no other Service, but the *crinodis necessitas*, viz. Expedition, building or repairing of Castles and Bridges; if he deserted the King's Colours, his Estate was forfeited to the King, the chief Lord of the Nation. If the military Vassal of a Lord, thro' Negligence did not appear at the Standard, or thro' Cowardise deserted his Lord, he forfeited his Lands to his Lord of whom he held them.

Secondly, That if a military Vassal was killed fighting under his Lord's Banners, his Heriot should be forgiven him, which was the Tenant's Furniture for War, to be yielded to the Lord at the Tenant's Death.

Thirdly, That the Lands he was possessed of at the time he was killed as aforesaid, and also his Goods should be equally divided among his Children according to the ancient Law of Partition.

Canute's Seventy Seventh Law gives leave to every Freeman to hunt in his own Grounds and Woods, but prohibits pursuing the Game in the Woods that the King reserved to himself for his own Diversion, under the Penalty of the Mulf, termed in *Saxon* the full *Wite*. *Archaion*
125.

Some time after *Canute's* Code of general Laws made at *Winchester* as beforementioned,

tioned, he made thirty four Forest Laws but before I enter upon them, I shall trace the original Rise and Growth of Forests in *Britain*.

To begin with the time of the *Britons* when their Princes and great Lords, had no Occasion to set apart Places for the Preservation of Game and Beasts of Venery, (their Bruery and uncultivated Lands, being such a Nursery and Shelter for them,) it was the Interest of both Princes and Lords, rather to destroy than preserve them.

During the Wars between the *Britons* and *Saxons*, so many of the *Britons* were killed and so many fled from the conquering *Saxons*, that the cultivated Lands were more than sufficient to maintain the Conquerors and the miserable *Britons*, that staid amongst them; for at that time there were no foreign Markets that the *Saxons* traded to, with the Product of their Lands. The *Saxon* Captains as Conquerors of the *Britons* took possession of all the Lands of the Nation amongst themselves, their Friends and Companions in Conquest, according to Contract and Agreement.

The Woods, Wafts, and Bruery Lands that were not appropriated to any particular Persons, remained to the chief Captain that in process of time assumed the Title of King, who, as Occasion offered, granted Parcels of such Woods to such as he thought fit.

Such Success had the Saxons in Britain, at their hungry half-starv'd Friends and relations swarmed out of the German live, to suck the Sweet of our Island, multitudes coming over, time after time, more and more useless Woods were appropriated and improved; and as Improvements were made, the Game and Beasts of Venerie retired from thence for Shelter into the frequented Woods; so that as Husbandry, and improving Lands increased, the casts of Venery grew more and more numerous in unoccupied Woods: Whither the Saxon Kings that took delight in Hunting, went for their Diversion, where was much Plenty of Game, that there was no occasion for restraining Laws to preserve

These Royal unimproved Woods are the Forests pointed at by Sir *Edward Coke*, ^{4 Inst. 319.} who says they are so ancient that no History or Record make any mention of their section and Beginnings.

The ancient Saxon Kings did not restrain their Nobles, Knights, or *Thanes*, from hunting in their Woods; and the neighbouring Farmers enjoyed a Liberty more valuable to them than Hunting, they had the Liberty of Pasturage, Boscage, Housebote, Plowbote, Finebote, and other Privileges, which from a long continued Usage, ^{Hollinshed 90.} became a Custom and Law; so that the people claimed a Right to those Privileges, which

which originally sprung from Connivance but were afterwards confirmed by *Magna Charta Forestæ*.

Whilst the ravenous Beasts of Prey were so numerous in the Royal Woods as to prevent the Increase of the Beasts of delicious Taste for the Table, the Kings gave free Liberty to the Nobility and Gentry, to hunt in their Woods; but in *Edgar's* time the Breed of ravenous Beasts, being much lessened, that King having an elegant Taste prohibited hunting his Deer, and appointed Officers to preserve all Game of the Table in his Woods, who were so rigorous and strict in executing their Orders, that Nobility and Gentry were prevented taking their Diversion there, and the Tenants from taking their accustomed Pasturage, Boscage, &c. The King's Officers levying Fines upon the People at their own arbitrary Will and Pleasure, there being then no Law in the Case promulged: This Procedure grew to so great a Grievance, that Noblemen, Gentlemen, and Farmers, made great Complaints for want of a Law, to ascertain the King's Prerogative and the Peoples Privilege in the Case.

King *Canute*, tho' in a great Measure Conqueror, through his innate Goodness and Justice, brought the Proceedings to Certainty, that all Men might know what they might and what they might not do.

publishing Forest-Laws, therein setting out the Bounds of his Forests, and limiting the Power of the Forest-Officers.

Some of the latter *Saxon* Kings took so great Delight in hunting, that they appointed Officers to preserve the Game in their Woods, who in time became so rigorous and strict, as not only to prevent the Earls and Thanes to hunt there, but also refused to allow the Freemen their ancient custom of taking Pasturage, Boscage, Housebote, Plowbote, Firebote, &c. as they had been anciently accustomed to do; the royal Officers exacted Mulcts and Fines from the Nobility, for hunting in the King's Woods, and inflicted Punishments upon the People, that therein took Pasturage, Boscage, &c. which raised such Complaints from both Nobles and People, that *Canute* published Rules and Limitations to his Officers, that had the Oversight and Care of the Royal Woods committed to them, as before mentioned.

These Rules were drawn up into form of Forest-Laws, and says *Manwood*, first penned in the *Danish* Language; but Lord Coke says, he knows not of any Laws of *Canute*, that were drawn in the *Danish* Language, and indeed by the Translation of them it may be fairly conjectured, they were originally penned in *Saxon*, from the *Saxon* Words retained, and not by the Translator turned

4 Inst. 320.

Manwood

401.

Spel. Gloss.

240.

turned into *Latin*, as *Pegen*, *Pere*, *Pite*, *Getbbrech*, *Lespegend*, &c. but in those the Translator plainly shows he was neither Master of the *Saxon* Language nor *Saxon* Letters. The Word *Pegen* that he leaves untranslated, is neither *Danish* nor *Saxon* he mistaking þ (*i. e.*) th for a Roman p. makes *Pegen*, which is neither *Saxon* nor *Danish*, instead of þegen a *Thane*. And *Pere* and *Pite* he mistakes the *Saxon* (*i. e.*) W, for a Roman P. The *Saxon* Words *Were* and *Wite* are *Mulæts* well known. And *Getbbrech* he mistakes for *Grithbbrech* (*i. e.*) Breach of the Peace. And *Lespegend* puts instead of *Lestbegen*, again mistaking the *Saxon* þ for a Roman p. *Lespegend* is an unknown Word, and *Lestbegen* fairly derived from the *Saxon* Læn and þegen *Thane*.

Archaion
125.

Cnute in his Seventy seventh Political Law allows Freemen to hunt in their own Woods and Fields, but in his Thirtieth Forest Law he gives them leave to hunt in their own Fields, and don't mention Woods. In his Twenty sixth Forest Law he allows his Bishops, Abbots and Thanes to hunt in his Woods. And so does the eleventh Chapter of *Henry III. Charta Forestæ*.

Sir *Henry Spelman* in his *Glossary*, has published *Canute's* Forest-Laws, and corrected the Mistakes, and observes that the Forest-Laws were made after his Body

Pol

political Laws, for in those Laws there being but one Chapter about Hunting, Reference would have been made to his Forest-Laws, if any such were then made.

Canute's Forest-Laws were made with the Advice and Consent of the Nobles of the Land. The Kings uncultivated Demeans were rarely termed Forests till this Body of Forest-Laws were made, they generally going by the Name of the King's Woods in the preceding Times; *Canute's* and *Henry I's* Forest-Laws were both made in favour of the Subject, and at their Petition.

As People increased, and there were Lands to cultivate more Land than was in improved Use, the Subjects petitioned the Kings, and obtained Grants of Parcels of their Demean Woods, which they improved and made fit for Arable and Pasture, which still retained the Name of the Woods, from whence they were taken, which Woods being the King's Demean, as Sovereign Lord of all Land, to which the Subject could have a particular legal Property: And as in the long tract of time, original Grants might be mislaid, lost, or worn out; (which was the case of those few of the *Saxon* Thanes and *Free-men*, that stood neuter between King *William* and *Harold*;) Such of their Lands as they had from ancient Royal Grants out of the King's Woods retaining the Name of the Woods,

Woods, out of which they were severed gave a Colour to the greedy *Norman* Barons to persuade the Kings that such Lands were held by Usurpation only, and thereby obtained Royal Grants of such Lands, from the first *Norman* Kings: The Defendants having nothing in *Scriptis* to produce to maintain their Title, but Prescription and immemorial Possession, were often outed of such Lands, by the Decrees and Judgments of the Courts of Law, the multitude of vexatious Suits from thence arising, at last produced the *Charta Forestæ* of King *John* and *Henry III.* wherein was enacted, that all Lands afforested by *Henry II.* or his *Norman* Predecessors Kings of *England*, that were not their own Demean Woods, should remain to such as could prove immemorial Possession and Usage.

The *Saxon* Kings and the *Danish* King *Cnut*, made no new Forests, but were content with the Woods that were their own Demeans, that were never granted to, or possessed by the Subject; but the Kings of the *Norman* Race not content with the first eight old Demean Woods or Forests; depopulated well-built Towns and Villages to make to themselves Places appropriated to their own Diversion only. *William* the Conqueror laid waste thirty six Towns in *Hampshire* to make a Forest, which still retains

the Name of the New Forest, and his Forest-Officers exercised such arbitrary Rule; as to abridge even the great Barons of the Privileges they enjoyed under the *Saxon* and *Danish* Kings; not at all regarding the Liberties given to the Subject by *Canute's* Forest-Laws.

King *William Rufus* is recorded in History for the Severity of his Proceedings against all that hunted in his Forests, he inflicted the Punishment of Death upon such as killed a Stag or Buck in his Forests, without any other Law than that of his own Will.

Henry I. was as arbitrary in this Case as his two Predecessors following their Precedents and his own boundless Will, in punishing Nobility and Gentry that hunted in his Forests.

The Nobility being prevented from their Field-Diversions in common as they had in the time of the *Saxon* Kings, such of them as were fond of Sporting, applied to the Kings for Licence to inclose Parks in their own Demesns, which in those Times they could not do without Royal Licence; some few Parks the Nobility inclosed about their Castles in *William* the Conqueror's Time, but in *Henry I.*'s Time, Licences to inclose Parks were so easily obtained, that in a short time, says *Daniel*, their Multitude grew to a Disease.

The Kings having so many Forests, had no occasion for Parks, but Henry I. having a Curiosity to have wild Beasts within his View, inclosed a Park about his Palace at *Wodestock*, which he stocked with Lions, Leopards, Lynxes, and other devouring Beasts, and took great Pleasure in seeing the wild Beasts chase the Deer.

Some Historians plead great Antiquity for Parks, from the Penalty of 6 Sol. set in King *Ethelbert's* Law upon *æþop-nyce*, which certainly means only *Septi violatio five fractura*, the breaking the common Hedges or Fences of a several ground, from whence arose the Writ, *clausum fregit*, which has no more Relation to an Inclosure for Beasts of Venerly, than the Writ *de parco fracto*, which is for Pound Breach.

2 Inst. 199.

Such of the Nobility and Gentry as brought Actions upon the Statute of *Westminster* the First for Trespasses done in their Parks, were first to prove the Legality of their Parks, either by Royal Licence, or immemorial Usage of the Place as a Park, which implied there was originally a Royal Licence. *Roger de Rannes* was amerced in King *Stephen's* Time forty Marks for inclosing a Park without Licence.

Mag. Rot.
5. Steph.
Rot. 6.
Essex.

Edric held at *Eye* in *Suffolk* twelve Plow-Lands in the Time of King *Edward*, and *Roger Mallet*, as it is recorded in *Domesday*, held it in Demean, &c. and there was

Councils or Parliaments.

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was a Market & *Parcus*, which Dr. Brady takes to be a Deer-Park, but I take it to be a Pound or Pinfold, that being more naturally related to a Market for Cattle, than a Park for Deer, which were very rare at that time. Brady Burghs 6:

Henry III. set a Fine upon *Thomas de Linde*, annually to be paid out of his Land, for killing a white Hart in *Blackmore Forest*, that the King had taken a liking to, which Fine was paid into the *Exchequer* by the Name of White Hart Silver. Manwood cap. 20:

Besides, *Canute's* Laws made in Parliament, and his Forest-Laws that seem to be his Act of Grace, there was a Law that occasionally sprung up, that is, the remarkable Law called *Englesore* which grew in *Canute's* Time, not enforced by any of his Statutes, but direct common Law, that had not its Beginning from any positive Decree or Ordinance, but put in practice by the King's Officers of Justice with the Approbation of the great Men of the Land; which Law being occasioned by particular Circumstances, I shall give a short historical Account of its Rise, Growth, Continuance and Dissolution.

The Danes having lorded it in *England* a great while, under their Commanders or Kings, *Anlave*, *Justin* and *Gutbmund*, *Ethelred* King of *England* came to Agreement with them, upon certain Sums of Mo- Archaeon 90.
Chron. Sax. 139:

The Antiquity of National

ney to be paid them as in the Year 991,
10000 l.

In the Year 994, 16000 l. besides Provisions.

In the Year 1002, 24000

In the Year 1007, 36000

In the Year 1012, 48000

In the Year 1018, 72000

These heavy Tributes were raised by Hidage, upon Land as was the Ship-Money for Maintenance of the Royal Fleet, which went down well enough with the *English*; but when it was applied and paid as a Pension or Tribute to the *Danes*, it was called *Dane-geld*, and became very odious to the *English*, to see their Money go to maintain the lazy drunken *Danes* in Luxury and Idleness, from whence a lazy slothful Fellow was called a Lurdan, *i. e.* a Lord Dane.

Brady 124.

The King and People of *England* beheld with Grief and Vexation the Insolence of the *Danes*, but not being able to rid the Land of them by Force, supplied their Want of Force with a barbarous Policy, by Advice of *Huna* King *Ethelred's* General of his Armies, which was, that the King should order Musters and Reviews of his Armies to be made through the whole Nation on one and the same Day, and private Directions to be given to the Commander of each Army, to fall suddenly upon the *Danes* on *St. Brice's Day*, being the Day after *St. Mar-*

Martin's, which Day the *Danes* used to solemnize with Revelling, Feasting, and Drunkenness, and before their Surfeit was off, was judged a proper Time to put the secret Resolution in Execution; accordingly, the Royal Armies in all Parts of *England* at one and the same Time attacked the *Danes*, in which the Inhabitants from universal Hatred of the *Danes*, joined with the King's Armies, and massacred the *Danes* both Men and Women in one and the same Day.

Savil.
William
Malm'sb.
64.

Walsingham gives a particular Account of this Massacre, and how barbarously it was put in Execution at *London*, and that certain young Men of the *Danish* Nation being too nimble for their Pursuers, got into a small Vessel they seized in the *Thames*, and fled to *Denmark*, and acquainted King *Swain* with what was done in *England*; who to revenge the Death of his Countrymen, together with an Ambition to conquer *England*, invaded the Nation with a Fleet of three hundred Sail, says *Brompton*, in the Year 1003, and landed in *Cornwall*, and marched to *Exeter*, and proceeding with Success, drove King *Ethelred* and his Family out of *England*, and governed the Nation absolutely, giving Law to *England* without any other Rule than that of his own Will and Pleasure, which his Army Officers put in Execution instead of Civil Magistrates,

Chron.
Sax. 133.

Henry Huntingdon says, That he himself when a Child, had heard it from certain old Men, that, by the King's Command, Letters were privately dispatched all over *England* to make away the *Danes* in one Night.

Hunting-
don's An-
nals in
Her. Savil.
429.

Henry Huntingdon says, the Massacre of the *Danes* was in the Year 1002. *Mat. of Westminster*, affirms it to be done in 1012. Other Historians also differ from one another as to the Year, some agreeing with *Huntingdon*, and others with *Mat. of Westminster*; but whether this Disagreement amongst the old Historians will bring the whole into Question, is not much to my present purpose.

Chron.
Sax.

Therefore to proceed to that which is certain, *Swane* either through Revenge, Ambition, or some other Reason, in fact invaded *England* in the Year 1003 or 1004, and got such footing here, as to govern by his Army, till his Death, when the *Danish* Army chose his Son *Canute* King.

Savils
Hoveden
433. 604.

The *Danish* Army of Mercenaries were so burthensome to the Nation, that the great Men of the Nation to get rid of it, swore Allegiance to *Canute*, and petitioned him to send the Army of *Danish* Mercenaries Home to *Denmark*, offering the King to be Sureties, for the Life and Safety of such old *Danish* Inhabitants as were by Agreement to stay here. And for the Safety of

of these Sureties, they offered to pay into the King's Treasury forty six Marks for every Francigena, *i. e.* Dane or Foreigner that was slain, if the Manslayer was not produced and brought to Punishment due to wilful Manslaughter; if the Criminal was not taken, the Town where a Foreigner was found slain, was to pay forty six Marks into the King's Treasury, and if the Town was not able, the Hundred was to pay the Mulfet; unless *Engleshire* was found, that is, unless the Person slain was found by Inquest to be an *Englishman*, and then this Law of *Engleshire* was not concerned, the Manslayer being to receive Punishment according to the ancient Law in the Case.

There were four Circumstances that excused the Town and Hundred from the Mulfet. *Mirror 47.
7 Rep.
p. 16.*

First, If the Manslayer was taken or known, for then he was to be attainted of the Manslaughter or Murder. *Calvins
Case.*

Secondly, If the Criminal fled to a Monastery, and known to be in Sanctuary there, or apprehended before he took Sanctuary.

Thirdly, If the Death was found to come by Mischance.

Fourthly, If by the Coroners Inquest, the Parentage of the Person slain was found either on the Father's or Mother's Side to be *English*, then it was brought in *Engleshire*, and no Mulfet to be paid. But if the Lineage

neage was not found, then it was to be taken for granted he was a Foreigner.

Ll. Ed.
Conf. 15.
16.
Hoved.
Edit.
Savil. 604.

Few Towns being able to pay so great a Fine as forty six Marks; as soon as a Foreigner was found to be slain, the Freeholders of the Hundred levied the Mulct, and one of the Chief of them, sealed the Parcel up, and sent it to the King's Treasurer, by whom it was to be kept a Year and a Day; and if within that Time, the Manslayer was taken and delivered to the King's Justice, then the forty six Marks were to be restored to the Hundred; but if in that Time the Manslayer was not found, the Kindred of the Slain was to have fix of the said Marks, and the King the other forty. And thus it is mentioned in *Hoveden*.

Ll. William Conq.
53.
Ll. Hen. 1.
92, 91.

This Law of *Engleshire* was first used in *Canute's* Time, continued in Practice in *Harold*, *Harefoot*, and *Hardicnut's* Time, and not made Statute-Law till *Edward the Confessor's* Time: And confirmed by *William* the Conqueror in his Laws, and by *Henry I.* in his Code of Law.

This Law of *Engleshire* at first View carries an Appearance of Injustice and great Partiality, till the Reason and Occasion of its Rise be known. The Bishops, Earls, and great Men, that were Sureties for the Safety of the *Danes*, readily gave in to the great Mulct of forty six Marks for their own Security, justly judging that so large a Sum

Sum to be levied upon the Hundred, would make the Inhabitants of the Hundred wherein a Man was slain, raise Hue and Cry with fresh Pursuit to apprehend the Criminal, and thereby save themselves from paying so great a Fine.

Bracton makes the Fine greater than the Laws of *the Confessor*, the *Conqueror*, or *Henry I.* it being in all of them forty six Marks, and in *Bracton* sixty six Marks, which may be a Mistake in the Printer, in not placing the X as it was in the Manuscript, Lord *Coke*, after *Bracton*, also makes the Forfeiture to be sixty six Marks in *Calvin's Case*. But the three Laws being uniform, must weigh down the Balance.

The Author of *the Mirror of Justices*, calls this *Engleshire* a Statute-Law of King *Canute's*, but it is not in his Code of Laws, made at his Parliament of *Winchester*, with the Advice and Consent of his Nobles. The great Men having enter'd into Surety to the King for the Safety of his *Danes*, he was therewith Content; and the Nobles for their own Security, desired the King to lay the forty Marks Fine upon Towns and Hundreds as before, but never made a Law in Parliamentary Way till the *Confessor's* Time; which continued Law till *Edward I.* Ed. III. II. when it was outted and abolished by Act of Parliament.

The

The next Legislator to King *Canute*, was *Edward the Confessor*, who with the Advice of his Parliament picked out the best and most agreeable of the Laws of King *Edgar* and of his other Predecessors the *Saxon* Kings, which with the Collection he made out of the *West-Saxon*, *Mercian* and *Danish* Laws, made up that Body of Law, called *St. Edward's Laws*, and *Lex Anglia*, & *Lex Terræ*, mentioned more at large in the first Chapter, fol. 25 and 26.

This King's religious and just Administration was as much, or more valued by the People, than the Text of his Laws.

The Royal Prerogative, and Parliamentary Privilege hardly ever clashed in the *Saxon* Reigns, Kings made Laws with the Advice and Consent of the Nobles, but the executive and punitive Part was in the Kings; in many of the Laws we find, *ego volo, ego jubeo*, such and such Mulcts and Fines to be inflicted upon Offenders; but those Fines were ascertained in the *Saxon* Statutes, and never exceeded by the King's Ministers.

11. Wil-
liam Conq.
63.

William the Conqueror confirmed King *Edward's* Laws, which with the Additions made by him with the Advice of his Barons, are the Statutes or Acts of Parliament of *William I.*

But the Laws were not put in Execution with such Moderation as in the *Saxon* Times, Mulcts and Fines were not so certain.

in, but more at Will and Pleasure of the King, his Judges and Ministers.

The *Saxon* Laws were short positive Precepts, not disputing, but commanding, and the Judges kept close to the Words of the Law, the Spirit of the Law was not reasoned away by either Judges or Advocates.

King *William's* Code of Laws were such as his Commissioners reported to him, viz.

the *Saxon* Laws with the Emendations and Additions made by him. The *Saxon* Laws

were a Compound of *British* and *Saxon*, as may be gathered from *Ingulphus's* men-

tion of his Master King *William's* Laws, viz. *Quippe cum aliarum legibus nationum,*

Britonum, scilicet Anglorum, Pictorum & Scottorum præponderasset. The *British* Laws here

referred to, are probably those collected and taken into *Ethelbert's* Digest of Laws, the

liber judicialis, the old *Dombec*, the Book of Dooms and Judgments upon Crimes.

That the first *Saxon* Legislators took into their Digests many *British* Laws and Cus-

oms, may be fairly concluded from their retaining the Denomination of many Offi-

ces and Officers, which naturally indicate the Continuance of the Laws those Officers

were to put in Execution. From the *Britons* we have the Denomination of the chief

Magistrate of a City or Corporation, viz. *Meyr*, which is not derived from the *Latin*

Word *Majer*; but from the *British* Word *Miret*,

Daniel
fol. 44.

Eadmer
173.

Bede 64.
lib. 2.
cap. 5.

Davies
Dict.

Archaion
172.

Miret, i. e. *custodire*. *Edlin* comes from *L* and *Llin* which imports *hæres vel linea Regis*, as appears in the Laws of *Howel Dda*. From the *British* Word *Edlin*, the Saxons termed the King's eldest Son *Etheling*, from whence arose that Saying concerning *Edward* the last Heir Male of the Saxon Kings, viz. *Edgar Etheling England's Darling*. The King *William* received and confirmed the Saxons Laws as reported to him by his Commissioners in the fourth Year of his Reign, yet in the last Year of his Reign he published another Code of Law, additional to the *Confessor's* Laws, as appears in his sixty third Law, viz. *Hoc quodque præcipimus ut omnes habeant & teneant Leges Edwardi Regis in omnibus rebus, ac auctis his quas constituimus ad utilitatem Anglorum*. *Gervase* of *Tilbury* in his *Dialogus* of the *Exchequer*, says, *quasdam reprobarunt quasdam autem approbare illas transmarinæ Neustriæ leges, quæ ad regni pacem tuendam efficacissimæ videbantur, adjecit*.

William II. surnamed *Rufus*, held Parliaments, but no Laws were made in his Time, but for levying *Danegelt* in an exorbitant manner, and other Taxes: He was so far from making good new Laws, that he observed not the good old Laws made by his Predecessors; and he broke in upon the old *English* Constitution much more than his Father did. *Florence* of *Worcester* gives an Account of this King's Reign, in these Words

ords: *Omnis legum fluit justitia, causisque
judicio positis, sola in principibus impe-
at pecunia.*

Rufus raised four Shillings a Hide upon
and, by the Title of *Danegeld*, to lend to his
other Robert Duke of *Normandy* upon a
mortgage of that Dukedom; to which Levy
the Barons in Parliament consented for once,
excusing even the Church-Lands,

Danegeld, being a Tax upon each Hide Mag. Rot.
Land, was not called Hidage in Cities².

and Burroughs; the Citizens and Burghers Hen. II.
Rot. 5, 6.
swearing in the same Proportion under the
Title of *auxilium* or *donum*.

After King *Stephen* and *Henry II.*'s time,
they meet not with a Tax levied by the Name
Danegeld, not that the Manner of rais-
ing Money by Hidage was dropped, but
the Name was changed into the *Norman*
Term, Tallage, in *English* Tax.

Henry I. at his Coronation promised to LI. H. 1.2.
the Barons and People upon that Occasion
assembled, to observe the old *English* Laws,
the Laws of King *Edward*; and by a Char-
ter under his Great Seal confirmed them.

This King made his Code of Laws by Archæon
and with the Consent of his Barons, as is 175.

expressed in the first Chapter, the whole
consisting of ninety four Chapters, such
parts of his Laws as were taken from the
old *English* Laws were very agreeable Hist. Com.
Law. 136.
the People; what was new of his

own

* Inhabi-
tants
between
the Rivers
Rhene,
Mase, and
Mosell.

own, tasted a little of the Canon Law, the *Salic* and * *Ripuarian* Laws, and much taken out of the Customary of *Normandy*, which the *English* were unacquainted with, and by no means liked, being more sharp and severe upon the People than the Laws of King *Edward*.

11. H. 1, 7.
3, 20.

However Law Proceedings in his time received a considerable Improvement, Methods being prescribed in his Statutes for Proceedings in County Courts, Courts of the Hundred, Courts Leet and Baron; these being the Courts wherein Justice was then administered, Crimes there punished, and civil Actions and Interests there determined.

11. Wm.
Conq. 36.

By this King's Statutes the Law also received an Improvement in Descents; for whereas his Father's Law says only, *Si quis intestatus obierit, liberi ejus hæreditatem æqualiter dividunt*;

11. H. 1, 70.

this King's Law gives more particular Directions, (*viz.*) *Si quis sine liberis decesserit, Pater aut Mater ejus hæreditatem succedant, vel frater vel soror, Pater & Mater defint, si nec bos habeat, frater vel soror patris vel matris, & deinceps quintum geniculum, qui cum proprios in partem sunt hæreditario jure succedant; dum virilis Sexus extiterit, & hæreditas inde sit, fæmina non hæreditatur; Primogenitus patris Feodum primogenitus filius habeat. Emptiones verò & deinceps acquisitiones det cui moriturus*

Genetivum.

velit. Sed si Bockland habeat quam ei Parentes dederint non mittat eam extra Cognationem suam; and so is the Law of *Boc-* Ll. Alfred
27.
and in the Saxon Statutes of King *Alfred*.

Henry left one Daughter *Maud* his Heir general, to whom the *Londoners* presented Petition to restore to them the Laws of King *Edward*; in *Walsingham's* Words in his *Hypodigma Neustriæ, ut liceret eis uti legibus sancti Edwardi, & non legibus patris sui Henrici, quia graves erant:* Which Petition she refusing gave Occasion to their Detraction from her, neither they nor the Nobles being well inclined to a female Government.

King *Henry* restored the Election of Bishops and Abbots, which before, he and his Predecessors invested, *per Annulum & baculum*; reserving those three Ensigns of Patronage, (*viz.*) *Conge d'Eslire*, Custody of the Temporalities and Homage upon their Institution. He is express in his second Law that his Father confirm'd King *Edward's* Laws, and he does the same, together with the Emendations and Additions hereto made by his Father with the Advice and Consent of his Barons in Parliament.

King *Stephen* not so scrupulous as *Maud* the Empress, promised to confirm King *Edward's* Laws, to release the Tax of *Danegelt*, to remit the Severity of the Forest Laws, and confirm to the Church *Conge d'Eslire*,
and

and not retain in his Hands the Temporalities of the Bishops: With these fine Promises he got to be crowned, and took the Coronation Oath; and the Bishops and Barons swore Fealty to him conditionally (*viz.*) so long as he observed the Tenor of his Oath, and made good his Promises. Condition is implied in the Oath of Allegiance, Homage and Fealty, between King and People, Lord and Vassal; the Oath of Allegiance being in Consideration of the King's Oath to preserve the Peoples Rights contracted and agreed between the *Saxon* Conquerors and their Assistants, between *William I.* and his *Norman* Assistants; the Coronation Oath being virtually expressive of the *Saxon* and *Norman* original Contracts but the Oath of the Bishops and Barons to King *Stephen* with Condition expressed, was of the first Impression: Kings of most deficient Titles have granted the most beneficial Laws and Charters. *Stephen* to gain the Interest of the Churchmen, accepted the Conditional Oath of Fealty.

Stephen according to his Promise, sealed a Charter of Confirmation of King *Edward's* Laws, and the Bishops and Barons taking Advantage from the Difficulties he was in with *Maud* the Empress and her Adherents, drew up the Charter in stronger Terms and more expressive of the *Saxon* Statutes and Administration, than was that

of Henry I. he forbid the Usage of the Civil Law; and no new *English* Laws were made in his time.

Stephen in his Charter owns himself to be elected King in these Words: *Ego Stephanus Dei gratia, assensu cleri & populi in Regem Angliæ electus, &c.* And the Pope in his Confirmation tells him that he was elected by a general Consent; (*viz.*) *Communi voto & unanimi assensu tam procerum quam etiam populi in Regem electus.* *Hagulfad 250, 312.*

Stephen having obtained the Crown disregarded his Promises and Charter, he and his Army lived upon Plunder and Free-quarter, took Sword in Hand what he could get; and the Barons his Adherents exercised Sovereign Authority in the Districts about their Castles, coined Money, raised Taxes, and imposed their Wills upon the People for Law. In *William* of *Newburgb's* Words, *Erant in Anglia quodammodo, tot reges vel potius tyranni, quot domini castellorum, &c.* Battles and Sieges of Castles, supplied the Place of Parliament-Statutes in this Reign. *Brady 234.*

In the Parliament of *Winchester* an Agreement was made (to put a farther Stop to domestick War) that King *Stephen* should hold the Crown during Life, and *Henry* the Dukedom of *Normandy*, and be proclaimed Heir apparent to the Kingdom of *England* *Daniel fol. 73.*

as the adopted Son of King *Stephen*, and that 1117 Castles built by the Permission of King *Stephen* should be demolished. After this Agreement the King made a Progress into most Parts of the Kingdom to reform the Mischiefs that had grown up under the Sword. At his Return he called a Parliament at *London*, to advise the best Manner of bringing the State into good Order, and was ready to hear, and free to put in Execution the Resolves of his Parliament, and soon after he grew good, and died.

Henry II. succeeded upon King *Stephen's* Death, and he wisely weighing his Circumstances, and how far the Power of the Bishops and Ecclesiasticks went in setting the Crown upon King *Stephen's* Head, in Neglect of his just Claim and Right, they having since the time of *Henry I.* enlarged their Power and Jurisdiction beyond their Vocation, and that his Successors might not be overborn by the Power of the Ecclesiasticks, as he had been in King *Stephen's* time, had it at heart to lessen their Authority; and in order thereto advised and consulted with his Lay-Nobility, who were jealous enough of the growing Greatness of the Ecclesiasticks, urging that their claiming an Exemption from Secular Punishments lessened the Authority of the King's Courts, and that the Bishops were notoriously partial

al to the Churchmen; that since the King's Coronation there had been above a hundred Manslaughters committed by Priests and Ecclesiasticks, and the Offenders not punished by the Bishops, as in the first Chapter pag. 35.

For Remedy whereof the King calls a Parliament at *Westminster*, and propounds to have it enacted, that all such of the Clergy as should be taken and convicted of any heinous Offence, should lose the Privilege of the Church, and be delivered to the civil Magistrate, to be punished for their Offences as other the King's Subjects were; which the Archbishop *Becket* and the rest of the Bishops so strenuously opposed that nothing was done; at which the King was so displeased that he dissolved the Parliament, in the Year 1163. *Daniel*
fol. 34.

The next Year viz. 1164 the King calls a Parliament at *Clarendon*, where the Laws of *Henry I.* were confirmed, and the famous Statutes of *Clarendon* made, which the Archbishop and Bishops swore to observe, tho' very unwillingly, being advised so to do by the Pope and Cardinals.

It was high time for the Monarchy to curb the exorbitant Encroachments of the Pope and Ecclesiasticks; for the Archbishop by the Pope's Encouragement, order'd his *Suffragan* Bishops to take into their Jails

all Clerks that were guilty of Crimes whether they were Murder, Manslaughter Theft or Breach of the Peace, and there keep and protect them from the King's Justices.

*Hoveden
Edit. Savil.
494 to
549.*

The Statutes of *Clarendon* being drawn up so strongly in Affirmance of the King's Sovereignty in all Cases without Reserve to the Ecclesiastick assumed Jurisdiction that upon Complaint of the Archbishop and Bishops to the Pope, he damned most of the Statutes of *Clarendon* and absolved the Archbishop and Bishops from the Oaths taken to observe them. This offended the King that he called a Parliament at *Northampton* where the Statutes of *Clarendon* were reinforced and enlarged, and

*Daniel fo.
33.*

there in Parliament the Archbishop was called to account for Royal Revenues by him received, which he thought not fit to answer, but fled into *France*; upon which the King, ordained that if any were found carrying Letters or Mandates from the Pope or Archbishop, containing any Interdiction of Christianity in *England*, he should be taken and without Delay executed as a Traitor both to King and Kingdom; and that any Bishop, Ecclesiastick, or Layman that should receive and retain such Letters should forfeit all their Goods and Chartres to the King and be presently banished the Realm.

Realm with all their Kindred and Adherents, and that no Bishops or other Ecclesiasticks should pass over Sea without Licence from the King first obtained; that none should appeal to the Pope: That all Clerks that had any Revenues in *England* should return into the Realm within three Months upon pain of forfeiting their Estates to the King; and that *Peter-Pence* should be gathered and kept till the King's Pleasure was known.

Henry II. confirmed the Laws of King *Edward*, and at his Coronation swore to maintain them, and he confirmed the Laws of *Henry I.* *Leges Henrici avi sui præcepit* (says *Hoveden*) *per totum Regnum inviolabiliter observari.* He check'd the Pride and Insolence of the Pope and Clergy by the foresaid Statutes made in his Parliament of *Clarendon*, which were renewed and enlarged at *Northampton*.

Hoveden
Edit. Savil.
491.

Mat. Paris
Ann. 1164.

Hoveden
549.
Hist. Com.
Law 138,
145.

These Statutes took away the Exemption the Ecclesiasticks claimed from Secular Jurisdiction, and ordered there should be no appeal to the Bishop without the King's Licence. That no Archbishop or Bishop should go over Seas at the Pope's Command without the King's Licence: That the Bishop should not excommunicate the King's Tenants in *Capite* without the King's Licence: That the Bishop should not have

Brady 226.

Append.
41.

Wilkins
321, 324.

The Antiquity of National

the Conuzance of Perjury or *fidei laesionis*. That the Clergy should be convened before Lay Judges, and that the King's Courts should have Conuzance of Churches and of Tithes.

The Writ *Ne exeas Regnum* is grounded upon these Statutes of *Clarendon*, of which I mention but this short Abstract, the Reader may see them at large in Dr. Brady's History, and Dr. Wilkins's Saxon Law. Something of this Nature was done in the Case of Archbishop *Anselm*, by Edict of *Rufus*, but not having Consent of the Parliament, the Writ could not be founded upon that. This King by the Advice of his

Epinomis

15.

Hist. Com.

Law 141.

Brady,

333, 334.

Daniel 10.

104.

Hoveden

548.

1. Ed. III.

16.

2. Ed. III.

2.

4. Ed. III.

2.

14. Ed. III.

16.

18. Ed. III.

20. Ed. III.

1, 2, 3.

Ll. H. 1. 70.

Parliament at *Northampton* instituted Justice itinerant in the tenth Year of his Reign *Anno Dom. 1164.* and divided the Kingdom into six Circuits. The Parliament at *Northampton* was held there the twenty fifth *January 1164*, and the Parliament at *Northampton* at *Easter 1176*, when he divided the Nation into four Parts, and to every Part appointed wise Men to do Justice in the Land. This King's Justices, and those of his Successors, continued to make regular Iters at the State Times till *Edward I.* constituted Justices of Assize and Jail Delivery in their stead.

This King's *Capitula Itineris* grounded upon the Statutes of *Clarendon* and *Northampton*, gave an Improvement to Henry

his Law of Inheritances; for in the fourth Statute of Northampton it is enacted, that upon the Death of a Free-tenant, the Heir shall remain in such Possession as the Father had of his Fee in his Life-time, and pay the Father's Debts and Legacies, and the Relict have her Dower; and if the Lord of the Fee refuse giving Seisin and Possession, the Justices according to Verdict of twelve Men shall award Possession. Brady 327.

By the eleventh Statute of Clarendon, the Bishops are prohibited to give Judgment of Loss of Life or Member, as appears by the Words of the Statute, and that they were Tenants in Capite per Baroniam. *Archiepiscopi & Episcopi & universæ personæ regni qui de rege tenent in Capite, habent possessiones suas de Domino rege sicut Baroniam, & inde respondent iustitiis & ministris regis, & sequuntur & faciunt omnes reëtitudines & consuetudines Regias, & sicut Barones cæteri debent interesse judiciis curiæ regis cum Baronibus, usque perveniatur in iudicio ad diminutionem membrorum vel ad mortem.* Brady Append. 43.
Dan. 2d Part 10, 22.

This Statute is in Affirmance of the Canon Law which prohibits Clergymen to be present in Judgment of Blood: But the Bishop of Durham notwithstanding the Canon and this Statute, continued to sit in Court in purple Robes and to give Judgment M.S. Parl. Journal 226.

ment of Death; whence comes that old Saying, *Solum Dunelmense judicat Stola & Ense*: He being a *Palatine*.

Hoveden
Edit. Savil.
549.

This King instead of Trial by Battle or single Combat, instituted the Trial by grand Assize, by twelve Knights or Freemen: The Writ to the Sheriff, called *magna assisa eligenda*, was to return four Knights before the Justices, which four Knights were upon their Oaths, to return twelve Knights of the Vicinage to try the *Mise* in a Writ of Right: *Mise* is a Term of Law appropriated to a Writ of Right, so called, because both Parties have put themselves upon the meer Right to be tried by the grand Assize; that, which in other Actions is called an Issue, in a Writ of Right is called a *Mise*.

Tho' the barbarous Usage of Trial by Combat or single Duel was not wholly abrogated by the Statutes of *Clarendon* and *Northampton*, yet the Trial by twelve Jurats appointed by those Statutes being so much more just and rational, soon grew into general Use: And the King gave Discouragement to combat by his own Writs, of which take one Instance from *Glanvil*, (viz.) *Rex Vicecom. salutem, prohibe. N. ne teneat placitum in curia sua, quod est inter M. & R. de una hida terræ, &c. nisi duellum inde vadiatum fuerit, quia M. est teneans,*

Glanvil
lib. 2. cap.
8, 9.

mens, *posuit se in assisam meam & petit recognitionem fieri.*

A Combat was demanded in the common Bench in the thirteenth of Queen Elizabeth, and allowed by the Justices, a Day assigned, Ground railed, and a Stage for the Judges built, Combatants ready, when by the Queen's Order, the Lord Chief Justice stood up, and forbad the Proceedings, and determined possession of the Lands to the Defendant, under Conditions mentioned in *Speed*, where you may see the whole.

Richard I. made many Constitutions without Parliament, as before mentioned; he distributed Justice as his Father had begun by itinerant Justices to whom he gave Articles of Inquiry, termed *Capitula coronatorum & capitula de Judæis*; he in some Measure reformed, augmented and improved the *Capitula Itineris* of his Father, wherein the Justices itinerant were limited to hold Plea in Writs of Right, or the grand Assize to half a Knight's Fee or under, but his King Richard in his *Capitula* enlarged the Power of the itinerant Justices, so that the People might in greater Values have Right done in their Counties without going to the King's Courts for Right.

*Hoveden.
Edit. Savil,
744.*

There are no Memorials of Statute Laws or Acts of Parliament in this King's time, other

other than for Aids and Subsidies; tho without all doubt Acts of Parliament were made in his time, yet the Records of them appear not, nor do the ancient Historians transmit any Copies of them. But the different Proceedings in the Courts of Law from *William I.* to *Richard I.* were very probably occasioned by new Statute Laws made in the times of the first *Norman* Kings.

3. *Ed. I.* 4. King *Richard's* naval Laws called the Roll of *Oleron* from the Place at which they were made, were a Collection of the *Saxon* maritime Laws, by him augmented and enlarged; and tho' not made with Advice of Parliament, were so good and agreeable, as to be confirmed by the Statute of *Westminster* the first.

This King in his eighth Year, established a Rule for Weights and Measures, that they should be the same throughout *England*.

11. *Wm. I.* which was a reinforcing King *Edgar's* Law of Weights and Measures according to the

57. Standard of *Winchester*, which was confirmed by King *William I.* and all these Ordinances were confirmed by *Magna Charta*.

King *John*. I having in Folio 36 given a short Account of this King and his Parliaments, and the great Contests between him and his Barons, in this Chapter confine my self to Acts of Parliament and Proceedings upon them.

At his Coronation he swore to preserve the Rights of the Holy Church, to abolish all bad and unjust Laws, and to pass and confirm such good ones as his Barons in Parliament should offer to him.

Wilkins
353, 356.

Hubert Walter Archbishop of Canterbury preached the Coronation Sermon, who being zealously attached to K. John, in his Sermon in opposition to the Right of Arthur Duke of Britain, advanced that no one had Right to the Crown, nisi ab universitate Regni unanimiter electus, which Doctrine King John approved in the Charters granted in the first Year of his Reign, wherein he expresses himself to owe his Crown to the Election and Favour of the People, in these Words, *Jure hereditario & mediante tam cleri quam populi consensu & favore.*

Old Register of
Canterb.

State
Tracts
387.

The Charters of Liberties and the Forest were with Difficulty obtained of this King by the Barons as in Folio 38. The King being under great Difficulties with his Barons, granted the great Charters which the Barons drew up as they pleased; they pickt out the best of King Edward's and Henry I.'s Laws, and this Charter was much more beneficial to the People than that of Henry I.

King John's Charters did not contain all the Statute Laws of his Predecessors, but only

only or principally such as were of a more comprehensive Nature, concerning the common Rights and Liberties of the Church, Baronage, and Commonalty; which were of the greatest Moment, and had been most invaded by his Brother.

There are many *British* and *Saxon* Usages, Customs and Proceedings in Courts of Judicature still in Practice, that are not in the Digests of *Ethelbert*, *Ina*, *Alfred*, *Edward*, *Athelstan*, *Edmund*, *Edgar*, *Ethelred*, *Canute*, or *Edward the Confessor*, which coming into Use before the time of Memory, obtained the Force of Law; immemorial Usage continued, says *Bracton*, is Law, (*viz.*) *Lex non scripta*.

The Charter of the Forest was to reform the Excesses and Encroachments which were made, especially in the time of *Richard I.* and *Henry II.* who had made new Afforestations, and much extended the Rigour of the Forest Laws.

Burnet's
Hist. of his
own
Times 32.

King *John's* original Charter being committed *in deposito* to the Archbishop of *Canterbury*, was found by Bishop *Warner's* Executors amongst his Papers; he being sent by Archbishop *Laud* when he was impeached, with the Key of his Cabinet, to secure his Papers; amongst the rest he took this Charter,

What

What other Acts of Parliament were made in *Richard I.* and in this King's time, the Rust of Time hath bereaved us of, or are absorpt in his *Magna Charta*, neither Record or History giving any account of them.

Sir *Edward Coke* in the Second Part of his Institutes, shews how the *English Law* stood before *Magna Charta*, and the Statutes of *Henry III.* whether they were introductory of any new Law, or only Declaratory of the old; what were the Causes and Ends of their being enacted, and what Branches of them have been since alter'd or repeal'd, all which that great Sage of the Law has done with such great Learning and Judgment, that I shan't presume to add any Observations of my own, but refer the Reader to that learned Judge's Comments upon the old Statutes.

Pope *Gregory* demanded of *Edward I.* the *M.* mark Tribute, granted by King *John*, to which the King answered, That without his Prelates and Barons Advice and Consent, he could not make any Answer; and that at his Coronation, he had bound himself by Oath to preserve the Rights of the Crown, and that without the Advice and Consent of the Barons in Parliament he would do nothing in the Case.

Edward

Cot. Re-
cords 102.

Edward III. understanding that the Pope intended to cite him to *Rome* to do him Homage, as King *John* did to one of his Predecessors for the Realms of *England* and *Ireland*, and also to demand Payment of the Tribute granted by King *John*, wisely advised with his Parliament; and it was enacted that neither King *John*, nor any King of *England* could bring the Realm into Thralldom and Subjection to the Pope or any other Potentate; and the Act declares what King *John* did, was contrary to his Coronation Oath; and the Parliament voted an Address to the King, therein expressing their Resolution to stand by the King against all Encroachments the Pope should make upon his Crown and Dignity. The Record of the Resolution of the Parliament in this Case is at large in the fourth Institute; but the Act of Parliament made on that Occasion is not printed: An Account of this Matter in Parliament is in *Cotton's* Records, to which I refer the Reader. I mention the two preceding Paragraphs here, as having relation to King *John's* Reign.

Cot. Re-
cords 102.
4. Inst. 13.

Henry III. in the ninth Year of his Reign, passed the two great Charters in Parliament, which little differed from the great Charters of his Father King *John*, granted at *Running-Mead*, and afterwards,

as before, in Folios 43, to 48, the great Charters were cancelled and confirmed several times.

Besides *Magna Charta*, many beneficial Acts of Parliament were made in this Reign: The Statute of *Merton* in the twentieth Year of his Reign; the Statute *de anno Bissextili*, in the twenty first Year; the Statute intitled, *Affisa panis & cerevisiæ*, in the fifty first Year; the Statute of Days in Bank in the same Year, and also the Statute of Dower, two Statutes of the Exchequer, and the Statute of Pillory and Tumbrel: And in his fifty second Year, the Statutes of *Marlbridge*, wherein the great Charters were confirmed; and about the same time the *Edictum de Kenelworth*, being an Award, Agreement, or Composition between the King his Noblemen and Commons; besides the Statute of *Ireland* (as termed) tho' it seemeth to be no more than an Edict of the King's or a Warrant of Directions to *Gerard* Son of *Maurice* Justicier of *Ireland*, made in the fourteenth Year of his Reign.

The Parliaments from *William I.* to the Bract. 34. time of King *John*, let no Opportunity slip to obtain from the Kings the Confirmation of the *Saxon* Laws, and their Promise to make them the Rule of their Government. The Kings made no Scruple to swear at their Coronations to observe the Laws, but when they interpreted them as they pleased; and

and after the *Magna Charta* of King *John* and *Henry III.* were obtained, there were frequent Contests between *Henry* and his Barons about the Interpretation of the Charters: *Bracton* gives it for Law that the King is the Interpreter of Royal Charters; his Words are, *Si dictio aliqua duos contineat intellectus, Domini Regis erit expectanda interpretatio, & voluntas, cum ejus sit interpretari cujus est condere.* It can't be presumed that *Bracton* meant such Royal Charters as the Barons were Parties to, as they were to *Magna Charta*; for to take him in that large Sense, is to make it Law according to *Bracton*, that the King can interpret as well the Spirit of an Act of Parliament as of Royal Charters confirmed in Parliament; which I look upon to be very far from that learned Sage's Meaning, and rather think that the Royal Charters that *Bracton* says are to be interpreted by the King, are his Royal Grants of Honours, Mannors, Lands, or other things of the King's own, in which no Person has a Claim or Property but the Persons to whom the King's Bounty is extended. King *James II.* his Judges follow'd *Bracton's* Words too literally and extensively, when they gave their Opinion that the King could dispense with all penal Laws, thereby putting *Magna Charta* and all Statute Laws into the Power of the King
whereas

whereas Lords and Commons are Parties to Acts of Parliament, which are not to be altered or repealed, but by the Authority that made them; and thus may *Bracton's* Words be fairly interpreted.

The Statutes of *Clarendon* as before mentioned, were made by that great Prince *Henry II.* with the Advice and Consent of his Parliament, to put a stop to the Usurpations and Encroachments of the Pope and his Instruments, here the Bishops and Clergy, and at a time when the Papacy was very powerful in *England*, the great Pope *Alexander III.* in the Chair at *Rome*, and his devoted Creature *Thomas Becket*, that towering presumptuous Bishop in the Chair of *Canterbury*: But however great and powerful the Church was at that time, notwithstanding the Pope damn'd the Statutes of *Clarendon*, and dispensed with the Oaths the Archbishop and Bishops had taken to observe the Laws made at *Clarendon*, yet the Pope's Thunderbolts were not sufficient to set aside the Laws made by the King and his Parliament, which were always in *England* a Bulwark too strong to be stormed.

The Popes gave a Precedent for a dispensing Power in *Henry II.* King *John*, and *Henry III's* time, which with *Papal non obstante's* to Oaths, Laws, and Statutes in the Bulls, caused a Spirit in *Henry III's*
L Parliament

Parliament of 1246, where it was resolved that Satisfaction should be demanded of the Pope: Accordingly the King himself writ to the Pope; the Bishops and Abbots writ by themselves, and the Temporal Barons by themselves, all uniform in their Articles of Complaints, against the Pope's Bulls with *non obstante*. These Letters so exasperated the haughty Pope, that he order'd the Bishops to levy a Tax of one Third of Moveables, upon all Clergymen, that did reside upon their Benefices, and one Moiety upon such as did not reside.

But the King sent Prohibitions to the Bishops Proceedings in the Pope's Orders, and to shew his farther Resentment to the Pope, sent Writs to his Sheriffs, to hinder the Ecclesiastical Courts from making Enquiry, unless in matrimonial and testamentary Causes; and these Writs were grounded upon the Statutes of *Clarendon*, that were confirmed at *Northampton* in *Henry II*'s time.

Tho' *Henry III.* would not allow the Popes *non obstante*; yet to serve his own Occasions he followed that Precedent and made out Writs with that detestable Addition of *non obstante*; but History fully shews the Difficulties that King was in, by not complying with his Parliaments. The Popes gave the first Precedents of a dispensing Power,

Power, which Princes that had Views to arbitrary Government, readily copied after: The Usurpation is highly detestable in both, but that of the Popes much the more enormous Crime, for they dispensed with Divine Laws, whereas Royal Dispensations reached to human Laws only.

Edward I. may be justly stiled the *English Justinian*, both Statute Law and Common Law obtained a great Perfection in his Time; to his Reign is justly ascribed the Honour of establishing methodical Proceedings in administering Justice between Man and Man, for Pleadings, Resolutions and Decisions grew regular and rational; good Laws he offer'd to his Parliaments, for their Confirmation and Consent, and when they passed into Laws, he made choice of learned and upright Judges to put them in Execution: Silently without Noise, and by gentle Steps and Degrees, he abrogated many bad and inconvenient Customs and Usages both in the superior Courts, and in the Courts of the great Men, and substituted such regular Methods, as by length of Time and Experience had of their Aptness and Convenience, have stood and been used ever since, without any great Alteration, and are now as it were incorporated into, and become a Part of the Common Law of *England*, says Chief Justice *Hales*.

*Hist. Com.
Law 163.*

The Antiquity of National

The old *Saxon* and *Norman* Statutes of his Predecessors, were short positive Institutions to correct, and by Mulcts to punish the Vices and Crimes that were prevailing at the time of their making; and many of the Methods of putting them in Execution, local, differing in one Place to what they were in another, but in this King's Time, the Sunshine of Reason and Uniformity broke forth into great Lustre. In this King's Time, the Law was so much amended and altered, that the old Coat was but just perceivable under the several new pieces set upon it, by his learned Improvers of the Law. The Statute Laws, though short in Comparison with later Acts of Parliament, yet were very clear, and fully expressive of the Sense of the Legislators.

3 *Ed.* 1. 34.

2 *Rich.* 2. 5.

12 *Rich.* 2.

11.

Ll. *Alfred.*

28.

Ll. *Edgar*

4.

Ll. *Cnute*

24. 34.

The first Statute of *Scandalum Magnatum* was made in this King's Time. *Westminster* the first, cap. 34. which was enlarged by the 2 *Rich.* 2. 5. and by 12 *Rich.* 2. 11. These Statutes are in Affirmance of the Common Law of *England*, viz. the *Saxon* Statutes, made for the Punishment of such as raise false Stories, and scandalous Rumours to raise Discord between the King and Nobles; with this Difference, the old Laws order'd the Tongues of such Revilers to be cut out, the modern Statutes inflict Fine and Imprisonment, and leave the Measure thereof to Judge and Jury.

The

The *Magna Charta* of King *John*, and that of *Henry III.* receiving their lasting Confirmation in Parliament in the twenty fifth Year of *Edward I.* and by *Articuli super chartas* in the twenty eighth of his Reign, I shall in a short Sketch draw out the Original from whence *Magna Charta* was taken, and how and after what manner succeeding Acts of Parliament were made.

The old Laws of *Britain* generally called the *Druides* Laws from their being committed to the Care of the *Druides* to see them put in Execution; such of them as Tradition and Usage had made known to *Ethelbert* the first *Saxon* Legislator, and were approved by him and his Wita's, were taken into his Code of Law, as appears from several *British* Terms, and the Testimonies of *Malmesbury*, *William Thorn*, and the Register of *Canterbury*, as expressed by *Speed*, *Speed* 349. who says, *Ethelbert* having a care of them that should come after, brought the Laws *S. Taylor* of *Kent* into their own Mother Tongue; 53. 49. from whence may be concluded, *Ethelbert* was well acquainted with the Laws and Customs of *Kent* before he made his Code of Laws, which were received by the rest of the Kings of the Heptarchy; though they had Laws also made in their own Kingdoms with the Advice of their Wita's.

Archaion

22.

Alfred the Great, becoming Monarch and Legislator of the whole Nation, made Inspection into the Laws of *Ina*, *Offa* and *Ethelbert*, and with the Advice of his Wita's, rejected such as were grown obsolete and useless, and retained in his Code of Law, such as were esteemed useful and proper to the Time. *Edgar* gave a considerable Enlargement to the Laws of his Predecessors.

S. Taylor

54.

The Laws of *England* went under a triple Denomination, viz. *West-Saxon*, *Mercian*, and *Danish* Law, which were not so many different Laws, Customs or Usages, being chiefly different from one another in the several Amercements, Mulets and Fines, for the Transgression of one and the same Law, as before mentioned.

Edward the Confessor with the Advice of his Parliament revised the Laws of his Predecessors, and from thence made the Code of Law, called King *Edward's* Law, and sometimes the good old Laws of *England*, which with the just and regular putting them in Execution, was the Law that the Barons so incessantly petitioned the *Norman* Kings to confirm and make their Rule of Administration, which they always promised to do at their Coronations, and how they performed their Oaths and Promises, appears in this Essay under their several Reigns.

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William the Conqueror received and confirmed the *Confessor's* Laws, which with the Additions thereunto made relating to military Tenures, and the Preservation of the publick Peace of the Kingdom, is the Body of Law called the Laws of King *William*, the same which King *Edward* his Kinsman observed before him, as are the Words of the Preface. Archaion
159.

William II. at his Coronation swore to observe the Laws of his Predecessors, which is enough to be said of this King, relating to Acts of Parliament.

Henry I. at his Coronation swore to maintain the Laws of King *Edward*, and of *William* I. and brought in a Volume of new Laws, very different from the old Laws of *England*, which for the most part are quite antiquated and grown obsolete, being made up of certain Parts of the Canon and Civil Law, and other Provisions and Customs that the King and Barons in Parliament thought on, chose and put together, as useful at that Time. Archaion
175.

The next considerable Body of Acts of Parliament were those made by *Henry* II. in his Parliaments of *Clarendon* and *Northampton*, from the Places where they were enacted, called the Statutes of *Clarendon* and *Northampton*.

These are the Acts of Parliament made before Time of Memory, whereof there are no authentick Records, but only Transcripts in ancient Historians, Books and Manuscripts, which being not upon Record, obtain no farther than by Usage and Custom, they are ingrafted into the Body of the Common Law, and make a Part of the *Lex non scripta*, as being made before the Beginning of the Reign of *Richard I.* which by *Westminster* the First is determined to be Time before Memory.

Many Parts of the Common Law visibly spring from such of the Laws of the *Saxon* Kings as are preserved by *Paris*, *Hoveden*, *Brompton*, and other ancient Historians, and Registers of Cathedrals and Abbies; and if more of the *Saxon* Statutes had been preserved (many of them being undoubtedly lost) probably the Footsteps of the original Institution of many more Laws that now obtain merely as Common Law, or Customary Law by immemorial Usage, would appear to have been at first Statute Law or Acts of Parliament, which in the *Saxon* Times were all very short, being only Capitularies of Laws, the Proceedings and Determinations upon those short Heads being much more than the Text, and retain'd by Usage only.

Now

Now I proceed to the Statutes made within Time of Memory. The *Leges scriptæ* being originally reduced into Writing before they were enacted.

In the seventeenth Year of King *John*, A. D. 1215, he being under great Difficulties promised to grant the Barons a Charter of Liberties which they drew up in as strong Terms as they pleased, collecting into two Charters the most comprehensive Laws of the *Saxon* Kings and of his *Norman* Predecessors, that were most strongly in Affirmance of the Laws and Liberties of the Church, the Baronage and Commonalty, and blunting the Edge of the Forest-Laws. And this great Charter the King confirmed in Parliament.

King *John's* great Charters were confirmed by *Henry III.* in his Minority, and cancelled at his Will, and confirmed as the Kings Necessities obliged him, and in the fifty second Year of his Reign confirmed by the Statute of *Marlbrige*; and again confirmed in the twenty fifth and twenty eighth of *Edward I.* as before mentioned. 52 H. 3. 5.

Edward explained, and excellently enforced *Magna Charta* by the Statute *de Tallagio non concedendo*, and by other good Statutes improved the Statute-Laws to a great Perfection, of which a short Account follows.

In

In *Edward I.*'s Time so many good and beneficial Acts of Parliament were made to give a particular Account of them would exceed my intended Brevity; therefore I shall mention only some of the most remarkable and leave the Reader to the Statutes at large for the rest.

He established and distributed the several Jurisdictions of Courts within their proper Bounds.

He check'd the Incroachments and Influence of the Clergy by the Statute of *Castille*. 35 *Edward I.*

He declared the Limits and Bounds of the Ecclesiastical Jurisdiction by the Statute *Circumspectè agatis & Articuli cleri*; which latter Statute says Judge *Hales*, was made at the Beginning of *Edward I.*'s Time, though it was not published till *Edward II.*'s Time.

He established the Limits of the Court of Common Pleas, by the Statute of *Articuli super chartas*, cap. 4.

He established the Extent of the Jurisdiction of the Court of *Steward and Marshal*, by the Statute of *Articuli super chartas* cap. 3. in the eighteenth Year of his Reign.

He settled the Bounds of inferior Courts of the Counties, Hundreds and Courts Baron, and by *Westminster I.* cap. 35. he kept the Courts of great Men within their proper Limits under several Penalties, which before

before very great Inroachments and Oppressions were exercised.

He provided against the Interruption of the common Justice of the Kingdom, by Mandates under the Great Seal or Privy Seal, by the Statute of *Articuli super chartas*, cap. 6.

He settled the Forms and Solemnities of Fines, confining them to the Common Pleas and to Justices Itinerant, and appointed the Place where they brought the Records after their Circuits, whereby one common Repository might be kept of Assurance of Lands, which he did by the Statute *De modo levandi fines*, 18. Ed. I.

He settled that orderly Method for the Safety and Preservation of the Peace of the Kingdom, and suppressing of Robberies by the Statute of *Winchester*.

He settled the Method of Tenures, to prevent Multiplicity of Penalties, which grew to a great Inconvenience, which he remedied by the Statute of *Quia emptores terrarum*, 18 Ed. I.

He settled a speedier Way for Recovery of Debts, not only for Merchants and Tradesmen, by the Statutes of *Acton Burnel* & *De mercatoribus*, but also for other Persons, by granting an Execution for a Moiety of the Lands by *Elegit*. By *West. 2.* cap. 18.

He

He made effectual Provision for Recovery of Advowsons and Presentations of Churches, which was before infinitely lame and defective, by Statute of *Westminster* cap. 5.

He made that great Alteration in Estates from what they were formerly, by *Westminster* 2. cap. 1. whereby Estates of Fee simple, conditional at Common Law, were turned into Estates Tail, not removable from the Issue by the ordinary Methods of Alienation: And upon this Statute and the Qualifications hereof, are the Superstructures built of 7 *Hen. VII.* cap. 3. 32 *Hen. VIII.* cap. 1. and 34 *Hen. VIII.* cap. 5.

He introduced quite a new Method, both in the Laws of *Wales*, and in their Methods of Dispensation by the Statute of *Rutland*.

By the Laws of *Wales* Bastards inherited, which he alter'd by the Statute of *Wales* 12 *Ed. I.* wherein 'tis enacted that Bastards shall not inherit.

He rectified and set in order the Method of collecting his Revenue in the *Exchequer* and removed obsolete and illeivable Parts thereof out of Charge; and by the Statute of *Westminster* 1. and *Westminster* 2. *Gloucester* and *Westminster* 3. and that of *Articles super chartas*, he did remove almost all that was either grievous or impracticable out of the Law, and the Course of its Administration.

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on, and introduced such regular Proceed-
ings into the Courts, as in a great measure
remain in practice to the present Time.

These Statutes so wisely adapted to the
improvement of the Common Law amongst
others are learnedly commented by Lord
Keble, and concisely mentioned by the Au-
thor of the History of the Common Law
of England; from which two great Men I
have taken this short Account of King Ed-
ward's Statutes.

A great many of the Acts of Parliament
of Edward I. though not found in the Re-

Hist. Com.
Law 19,
15, 10.

ords, and only preserved in ancient Manu-
scripts and printed Books, yet have all al-
ways been accepted, and taken as Acts of
Parliament, though the Rolls are lost; an-
cient and modern Books of Pleadings, com-
monly received Opinion and Reputation, and
the Approbation of the learned Judges have
given them a Sanction, and supplied the
want of the original Record: For though
the Record of a general Statute made with-
in Time of Memory be lost or not extant,
such Statute shall not lose its Force, if any
authentic Memorial thereof be in Books,
and seconded by a generally received Tradi-
tion and Usage, attesting and proving the
same.

The Statutes or Acts of Parliament in
Edward I.'s Time were drawn up into the
Form

Form of a Law, which being agreed and approved by Lords and Commons, became Law as soon as the King gave his Approbation and Consent, which was the finishing Confirmation and Sanction. The Lords consult and advise, the Commons consent and the King ordains; and in such manner were Acts of Parliament built up in *Edward I.* and *Edward II.*'s Time.

In the Beginning of *Edward III.*'s Reign another Method obtained, and lasted to the End of *Henry VI.*'s Reign, they were not in that space of Time drawn up in the first Instance into the Forms of Acts of Parliament; the first Spring was from Petition. And when it was for Redress of Grievances, it was presented by the Commons to the King in the Lords House; both Petition and Answer were enter'd in the Parliament Rolls, and out of both, by Advice of the Judges, and others of the King's Council, the Act was drawn up conformable to the Petition and the King's Answer and generally expressed to be granted by the King with the Consent of the Lords at Request of the Commons. Sometimes the King rejected Part, and ratified Part of the Petition, as it came from the King, so it drawn up into the Form of a Law, that was the Act of Parliament, of which manner are a multitude of Instances in

Inspection
of
Long Parl.
13, 47.

Hist. Com.
Law 14.

4 Inst. 25.

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Robert Cotton's Abridgement of the Records
of the Tower.

The Petition and Answer thus reduced in- 4 *Inst.* 26.
to the Form of a Statute was enter'd into the
Statute Roll, and the Tenor thereof affixed
to Proclamation Writs, directed and sent to
the several Sheriffs to proclaim it as a Law
in their respective Counties.

Some Difficulties arising and Inconvenien-
ces found, by this Manner of extracting
out of the Petition and Answer; about the
later End of *Henry VI.* and the Beginning of
Edward IV.'s Reign, the Parliaments re-
turned to the Method in Use in *Edward I.*'s
Time, to reduce Petition and Answer in the
first Instance into the full and compleat
Form of an Act of Parliament, which was
enter'd commonly in this Form: *Item quæ-*
dam petitio exhibita fuit in hoc Parlamento
in hanc actus in se continens, &c. and abat-
ing that Stile, the Method still continues
much the same as to the drawing up at
first Instance the Act in perfect Form, and
to come to the King for Royal Assent.

The Court of *Chancery* was not a Court 15 *H. VI.* 4.
of *Equity* till *Henry VI.*'s Time, it being 31 *H. VI.* 2.
then so made by Acts of Parliament. 4 *Inst.* 82.
33 *H. VI.* 7.

By Act of Parliament in *Henry VI.*'s Time,
the Number of common Attornies was li-
mited to the Number of Six in *Norfolk*, Six
in *Suffolk*, and Two in the City of *Norwich*.

In

Daniel
fol. 227.
24 Ed. III.
1.

In the Year 1330 the Fourteenth of Edward III. the King called a Parliament at London, which gave him great Aids toward his French Wars, and the King confirmed *Magna Charta*.

Cotton's
Records
31, 32, 34.

Daniel
fol. 231.
15 Ed. III.
1.

In the fifteenth of Edward III. the Commons petition that the great Charter of Liberties, and the Charter of the Forests be duly observed, and that whoever of the King's Officers infringed the same should lose his Place: And that the Chancellor and high Officers of the Kingdom should be chosen in Parliament, and sworn to observe the great Charters and the Laws of the Land. To which the King accorded, and set his Seal to the Act, which being afterwards repealed, is not in *Pulton's* printed Statutes.

2 Ed. III.

2.

4 Ed. III.

14.

Daniel
fol. 255.

Charters of Pardon for Felony, are not to be granted out of Parliament, but where the King may do it by his Oath.

This King in most of his Parliaments confirmed the great Charters which was generally at the first Meeting of the Parliament as may particularly be seen in the printed Acts. This short Sketch of *Magna Charta* is intended to show that the Law of the Land was the same before this Charter, and that this only declared what was Law before, and enforced by a Statute of King, Lords, and Commons.

Rich

Richard II. in the third Year of his Reign ^{Daniel}
A. D. 1379. removed Sir *Richard Scroop* ^{2d Part}
from being Lord Chancellor of *England*, to ^{fol. 3.}
which high Post he was appointed with
Consent of Parliament the Year before.

In the fifth of *Richard II.* was made the ^{3 Inst. 40.}
first Statute relating to Heresy, and being
without the Consent of the Commons was
not upon the Statute-Roll, but by *John*
Braibroke Bishop of *London*, Lord Chancel-
lor, was caused to be put into the Parliamen-
tary Writ of Proclamation of Statutes.

In the second of *Henry IV.* was made the ^{2 H. IV. 15.}
first Statute-Law for burning of Hereticks,
which passed Lords and Commons, and had
the Royal Assent.

In the thirty first of *Henry VIII.* passed ^{31 H. VIII.}
the Act for burning such as Hereticks that ^{14.}
did not conform to the Six Articles in that
Statute mentioned; which was so severe a
Law as to be called the Bloody Act.

An Act of Parliament was made in the ^{26 H. VIII.}
twenty sixth of *Henry VIII.* to empower the ^{14.}
Bishop of the Diocess to name a Suffragan ^{Burnet's}
or two in his Diocess, as in the Diocess of ^{Refor.}
Norwich, one at *Tbetford*, and another at ^{Vol. I.}
Ipswich. The Bishop was to name two Per-
sons to the King for him to make his choice
of one to be a Suffragan Bishop. ^{P. 257.}

C H A P. III.

The constituent Members of great Councils or Parliaments, and first of the Lords.

THE old *Britons* held general or national Councils before *Cæsar's* Invasion as mentioned in his Commentaries; who were the constituent Members of the *British* Councils, is the Subject of this Chapter.

Kilian
voce Edel.

Somner
voce Ethel.

S. Taylor
49.

The Members of the ancient *British* Councils were the Princes, their Sons, the *Edlins* of Princely or Noble Race, the *Druides* their Priests, and Lawyers, and the Governors of the People; all met in Council armed, but the *Druides*, who from the Sacredness of their Function were exempted from Service in the Wars: Young Men they did not admit into Council till they were esteemed of Ability of Mind, and Body to be fit for Council and War, and then the President in Council delivered to such young Man a Spear or Partisan, from which Time he was a Member of the Commonwealth, and fit to be appointed or chosen in Council, Governor of the People of a Village or District, or a Leader in their Armies.

During

During the *Roman* Government in *Britain*, 'tis in vain to enquire after *British* Members of Council, they having no general Councils, till upon the *Romans* deserting the Island, the *Britons* re-assumed their ancient Manner of holding general Councils, the Members whereof were the same, as before the *Roman* Invasion, excepting the *Druides*, who were driven out of the Nation before the *Romans* left it.

After the *Saxons* had made a compleat Conquest of the *Britons*, they went into Measures for settling Peace, and Property in general Councils, which they called *Witenagemote*, a Meeting of *Wita's*, wise Men, i. e. Nobles.

The *Saxon Wita's* of which the *Witenagemote* consisted, were the original Sharers of the Lands of the *Britons*, the *Saxons* were a Parcel of Collegues, Joint-Undertakers, who by Precontract were to divide amongst them the *Britons* Estates; the chief Leader afterwards assumed the Name of King, and his Collegues were termed *Thegnes* or *Thanes*, and in Latin *Capitanei*, from their having a Capital Right in the *Britons* Lands: These Collegues and their Descendants were the *Saxon* Nobles, that were the Members of the great Councils, the Suiters of the Court of the Grand Seignory of the Kingdom; all Nobility at that Time arising

ing from Possessions. The *Saxon Capitanei* in their Portions of Land, held Courts and judged their Vassals, and after the Manner of the *Britons*, were petty Princes in their own Territories, and obliged the Kings to swear to administer equal Right to all, and to be obedient to all Laws made and agreed in general Council.

Æthelbert the first Christian *Saxon* King made his Code of Laws in *Witenagemote*, by and with the Advice of his *Wita's*, he being the first *Saxon* Christian King as well as Legislator, and had his Bishops and chief Ecclesiasticks in his *Witenagemotes*; The Bishops were Members of great Synods or Councils in his Reign with the Lay-Nobility, as amongst the *Britons* in *Wales*, as in Folio 17.

The Laws of the two Kings of *Kent*, *Hlothar* and *Eadric* were agreed by the *Wita's*, and confirmed by the two Kings who did not reign together; but *Eadric* succeeded *Hlothar*, and with the Consent of his *Wita's* confirmed the Laws made by his Predecessor.

Wilkins 10.

Wightred the next *Saxon* Legislator, summoned his *Wita's* to the *Witenagemote* at *Berghamsted*, where his Laws were made with the Advice and Consent of the *Wita's* which is a general Term for all Nobility for the Laws were signed by the King

Chron.
Sax. 48.

Wer-

Werburg his Queen, the Bishops, Abbots, Abbeſſes, and the reſt of the *Wita's* aſſembled at *Berghamſted*.

Ina King of the *West-Saxons* in *Wittena-gemote*, made his Code of Laws by the Advice and Conſent of *Cenred* his Father, *Hedda* and *Erkenwald* his Biſhops, his Aldermen and the reſt of his *Wita's*. Archaion
1.

Offa is mentioned by *Alfred* in the cloſe of his Eccleſiaſtical Laws to be a Legiſlator; he ſays there, that he had inſpected the Laws of *Ina*, *Offa*, and *Ethelbert*. *Offa's* Laws not being publiſhed amongſt the *Saxon* Laws, I can't tell who were the conſtituent Members of his *Witenagemote*, and whether his Laws were there made, but in all probability he followed the Cuſtom of the Time in the Form and Manner of making his Laws: He held a Council or Synod at *Calcuith*, where was made the firſt Law or Canon for Payment of Tithes. Archaion
22.
Tyrrell
Cl.

Kenwolf King of *Mercia* held a *Witena-gemote* in the Year 811, ſays Mr. *Tyrrell*, from the Annals of *Winchelcomb*, wherein the conſtituent Members of that Aſſembly are termed, *Merciorum optimates*, *Episcopos*, *Principes*, *Comites*, *Procuratores*, *meofque propinquos*. What theſe *Procuratores* were, I ſhall account for when I come to the *Norman Reigns*. Tyrrell
xcv.

Spel. Con.
Tom. 1.
pag. 340.

Tyrrel
247, 255.

Bede. 27,
33, and
passim.

Prid.
Tithes 175.

Spel. Con.
350.

MS. Parl.
cap. 1.

Tyrrel.
261.

Egbert held a *Witenagemote* at *Kingston* consisting of *Wita's Anno Dom. 836*. He held a *Witenagemote Anno Dom. 829* at *Winchester*, where by Consent of his *Wita's Clerus & Populus*, he changed the Name of the Nation and called it *England*, and the People *Englishmen* instead of *Jutes, Angles, and Saxons*, tho' it appears by the Title of *Bede's History*, and in several Chapters, that the Nation was called *England* before *Egbert's* time. The Title of *Bede* being, *Ecclesiasticæ historiæ gentis Anglorum libri quinque*, and he writ near a hundred Years before King *Egbert* began his Reign: In the twenty third Chapter I find, *prædicare verbum Dei genti Anglorum*.

Ethelwolf in the Year 855, held a *Witenagemote* at *Winchester*, wherein the tenth of the Kingdom was given to the Church, by and with the Consent of the Bishops, Abbots, Abbeſſes, Dukes, Earls and Noblemen of the whole Land, *aliorumque fidelium infinita multitudine*, (says *Ingulphus* and *Matthew of Westminster*) *qui omnes regium chirographum laudaverunt, dignitates verò nomina subscripserunt*. The *infinita multitudo* had no Share in making the Laws, but only consented and applauded the Acts of the King and Nobles, it appearing in no History of this time, that the People had any Negative to Laws made by King and Nobles.

appeal

appears by *Edgar's* Charter to the Abby of *Ely* that such Numbers were wont to meet at *Witenagemotes* as no Room could hold; therefore *Edgar's* at *Wulfamere* where this Charter was made, met in the open Field, but it no where appears that the People were Parties to the Charter, but only approved and applauded what was signed by the King and the Nobles.

Alfred the great and good Legislator inspected the Laws of his Predecessors, and with the Advice of his *Wita's* rejected such as were obsolete, and confirmed and enforced such as were esteemed useful, which with the Addition made by him and his *Witenagemote*, was the Code of Law of his time that was approved by all the People. But Noblemen only were the Parties concerned in making of his Laws. Archaion 22.

The League or Laws agreed between *Alfred* and *Guthron* the *Danish* King, were made with the Advice and Consent of the *Wita's* of both Kings, as it is expressly mentioned in the Preface to that League. Archaion 36.

The League between *Alfred* and *Guthron* was confirmed and enlarged by *Edward* and *Guthron*, by and with the Advice of their *Wita's*. Archaion 41.

Edward the Elder's Code of Law begins in an imperial Stile, as an *Edictum principis, ego Edwardus Rex præcipio, &c.* Archaion 32.

but by what follows, it appears that his Laws were made with the Advice of his *Wita's* in his *Witenagemote* at *Exeter*, as is expressed in his fourth Law: In the *Latin* Translation thus, *Edwardus Rex Exoniæ commoratus, ac Sapientum suorum usus consilio, &c.*

Æthelstan's Laws were made by the Advice of *Wulfhelm* Archbishop, and his other *Archbison* of *Wulfhelm* Archbishop, and his other *45, 46, 53.* Bishops, and *Godes Theowa*, i. e. Gods Ministers, the Priests. And at the Conclusion of the first Part of his Laws, they are said to be made at *Granchester* by the Advice of his Archbishop, his *Etheling's* and *Wita's*; which in modern Terms are Lords Spiritual and Temporal.

His Code of Laws made at *Exeter* in *Christmas*, is expressed to be with the Advice of his *Wita's*, which general Word there includes the whole Nobility both Spiritual and Temporal.

The *Godes Theowa* are not to be taken for Priests in general, In the *Saxon* it is, *Miner þencebirceoper ealpa mina oþpa Birceopa* 7 *Loðer ðeopa* the Word *Mina* extends also to *Godes Theowa*, which is in modern *English*, my Bishops and my Priests, that is my Priests of my Patronage, or my Chaplains, viz. *Dignitaries* of the Church, as in *Æthelstan's Judicia Civitatis Lundonia*, where a Value is set upon every Person's Head, the Word *Secular Thane*, and God's *Thane*

Thane are of equal Value, that is the King's *Thane* and the King's Priest, for every *Thane* and every Priest were not Members of the *Witenagemote*, only the King's *Thane* and the King's Priest, that is the *Dignitaries* of the Church, who were the Kings Ecclesiastical *Thanes*, of equal Dignity with the King's Lay *Thane*; as appears in the *Judicia Civitatis Londoniæ* aforesaid, were made by the Advice of the Bishops and *Gerefan* i. e. Aldermen or Earls, which Constitutions *tam comites quam coloni* swore to observe; and note, that tho' the Earls and Churls are mentioned together in that Part relating to the Swearing to the Observance of them, yet in the enacting Clause the Churls are not at all mentioned; the Words being, *Hoc est consilium quod Episcopi & præfati edixerunt*, as before in the first Chapter.

Savil's
Edit. of
Ingulph.
353.

King *Withlaf* of *Mercia* his Charter to the Abby of *Croyland*, which was signed by the King, *Egbert* King of the *West-Saxons*, *Ethelwolp* his Son, *Ceolnoth* Archbishop of *Canterbury*, many other Bishops, Abbots, and Dukes, and then signed *Swithinus Presbyter Regis Egberti*, and *Bosa* King *Withlaf*'s Secretary, and no other of less Degree, the King's Chaplain being a *Dignitary* of the Church, signed along with the Kings, the Bishops and Lay Nobility.

Edmund's Laws were made at *London* in *Archaion* Easter, in a Council of his Ecclesiasticks 17.
and

and Laicks, and that is all is said in his Laws of the Members of the Council that consented to the making of them, only the two Archbishops Odo and *Wulston* are named, and many other Bishops in general, and his Laicks are in the original *Witena* that is his *Thanes*, his Nobles.

Eldred held a *Witenagemote* of Bishops and Lay Nobles only, says *Ingulphus*, before mentioned in Folio 23.

Archaion
62, 65.

Il. Cnst.

9.

Il. William

Conq. 57.

9. *H. III.*

25.

14 *Ed. III.*

12.

Mirroure

cap. 1.

Seft. 3.

Edgar's Laws were made in a *Witenagemote* of his *Wita's*, without any Epithet, but according to the Custom of those times may be determined to be Lords Spiritual and Temporal, both being included in the single Word *Witena*. In his eighth Statute it's ordained that there shall be but one Standard of Money, and that Weights and Measures shall be according to the Standard of *Winchester*, which being so shortly mentioned implies that the Standard of *Winchester* was then well known, and probably mentioned in King *Alfred's Domesday* called in *English* the Roll of *Winchester* from its being kept in *Alfred's Treasury* there; and this ancient Standard is confirmed by *Magna Charta*, and later Statutes.

Amongst the Ordinances of the ancient Kings mentioned in the *Mirror*, one relates to Money, wherein it is said that no King of this Realm shall change the Coin

or impair or enhance or diminish it, without Assent of parliament, that is without the Consent of the Nobles, which through all the preceding Reigns appear to be the only Members of Parliament.

Ethelred his Code of Laws was made at *Wodestock* in *Mercia* with the Advice of his *Wita's*; and the League between him and *Anlave* was made with the Consent of his and *Anlave's Wita's*. *Archæon*
88, 90, 94.

The *Senatus-Consultum de monticulis Wal-* *Wilkins,*
125.
liæ was made with the Advice and Consent of the *English Wita's* and the *Roldboran* i. e. Counsellors of *Wales*.

The *Liber Constitutionum* was composed with the Advice of his *Wita's*: The Second Part of his *Liber Constitutionum* was made at *Wantage* in *Berkshire* with the like Advice; in the Word Advice is implied Authority in the Case.

This King also held a general Council at *Ænham* in *Hampshire*, where Laws were made by him and his Nobles. viz. *Hæ sunt constitutiones quas Angli consilarii elegerunt & edixerunt*, and these Laws were made by the King and his Nobles only to be sure, for none but them were ever called the King's Counsellors, as the Barons of latter times have been stiled *consilarii nati*. *Spel. Con.*
Tom. 1.
pag. 513.

Canute

Archæon
97, 107,
122.

Canute at his *Witenagemote* held at *Winchester* in *Christmas*, made his Laws with the Advice of his *Wita's*, and like a good Christian King, first began with enforcing the Laws of God and Holy Church.

His political Laws were also made with the Advice of his *Wita's*, who tho' they were Parties to the making of them, the enforcing Part is an imperial Stile, viz. *per omnem Angliam observari præcipio*, and in his sixty seventh Law *præfectis meis omnibus mando*, &c, that is, the making the Law was in the King and Nobles, but the Administration and putting them in Execution, in the King and his Ministers.

Coke, 9.
Rep. to
Reader.

In the fifth Year of his Reign he held a *Witenagemote* of Archbishops, Bishops, Dukes, Earls, Abbots, *cum quamplurimis gregariis militibus, ac cum populi multitudine copiosa*, &c. This Multitude of People was a common Attendant of the Royal Courts *de more*, which being held at the great Festivals, Holiday times, when the People were at leisure, and relaxed from their Labour, flocked to the King's Court, where at those Seasons they were sure to see the King and his Nobles in State and Grandeur, where was feasting, of which they got plentiful Remnants, and with the Feasting there were Acts of Legislature, and the Peoples Hearts being made glad, they generally

nerally applauded all that was done by the King and his Nobles; and that was all the Share the Commons had or claimed in those Days, for *populi multitudo* was no constituent Part of the great Councils or Parliaments. Inspection of Long Par. 24.

The Saxons had two sorts of *Thanes*, Ll. Canut. 69.
viz. the King's *Thane* and the lesser *Thane*; by the Laws of *Canute*, the King's *Thane* was charged with four Horses, and the inferior *Thane* with but two for Heriot. The Heriot commuted into Money was four Pound for a King's *Thane*, and two Pound for the lesser *Thane*; as in a Fragment of Camb. Brit. 103.
Canute's Laws, si minoris Vironis i.e. Baronis, 2 Libræ; si majoris quatuor; majores Barones & minores Barones, shall be described in King *John's* Reign.

Edward the Confessor was the Legislator so highly adored in the *Norman* Reigns; the constituent Members of his Parliaments were Lords Spiritual and Temporal, for tho' in his Law *de Apibus*, 'tis said a Tenth was granted by former Kings to the Church, *à Rege, Baronibus & Populo*, yet it no where appears either in ancient Registers or old Historians, that the Commons in his or his Predecessors times, were Parties to making of Acts of Legislature, which his Law *de Regis officio* plainly makes out in the following Words, viz. *debet enim Rex omnia ritè* Ll. Ed. Conf. 2, 17, 21.

ritè facere in Regno, & per iudicium procerum Regni: Et debet iudicium rectum in Regno facere & iustitiam per consilium procerum regni sui tenere.

What the *Proceres* were that are mentioned in the seventeenth Law, is well explained in his twenty first Law, *de Baronibus qui suas habent curias & consuetudines*, in the following Words, *viz. Archiepiscopi, Episcopi, Comites, Barones, & omnes qui habuerint Sacham, Socam, Thol, Theam & Infangthefe, etiam milites suos, & proprios servientes, scilicet dapiferos, pincernas, camerarios, pistoris, & cocos sub suo friborgo habeant; & item isti suos armigeros vel alios sibi servientes sub suo friborgo.* These Barons, these *Proceres*, were the Lords of great Honours and Manners, that had great Estates and great Power, who had Knights and the greatest Commoners their Vassals and Suiters of their Courts.

Archaion.
1.

From this King upward to *Ina*, and *Wightred*, we find no constituent Members of Lay or Ecclesiastical Synods but the Spiritual and Temporal *Wita's*, as in the Preamble to *Ina's* Laws they are said to be made with the Advice and Consent, *Episcoporum meorum, omnium Senatorum meorum & natu majorum Sapientum populi mei.* These last were Governours of the People, that had the People under their Jurisdiction,

on, and answer'd for them in great Councils, as in the Council or Synod of *Bergbamsted* held by King *Wightred*; in his First Law, are these Words, *congregatum fuit optimorum, Procerum consilium, &c. Et loquebantur omnes ecclesiastici ordinis dignitates unanimiter cum populo sibi subiecto*, they answered for the People within their Jurisdictions.

Sir *Edward Coke* and other learned Writers, conclude that in *Edward the Confessor's* Parliaments, there were Commons regularly chosen for Counties, Cities, and Boroughs, from the Authority of an ancient Manuscript bearing this long Title. *viz. Modus quomodo Parliamentum Regis Angliæ & Anglorum suorum, tenebatur temporibus Regis Edwardi, filii Regis Ethelredi, qui modus recitatus fuit per discretiores Regni coram Willielmo duce Normanniæ Conquestore & Rege Angliæ, ipso Conquestore hoc præcipiente, & per ipsum approbatus, & suis temporibus & temporibus Successorum suorum Regum Angliæ usitatus.*

4 Inst. 2.
12.

This pretended Piece of Antiquity, says *Tit. Hon.* Mr. *Selden*, is the Imposture of some bold 739, 743. Fancy, which he proves by Terms therein, that did not come into Use till long after the *Confessor's* time, as *Iustitiæ de banco, capitalis Iustitiarius qui tenet placita coram rege*, the Barons of the Exchequer, Steward, Marshal, &c. and farther the Quantity of an Earldom and Barony, therein limited to

MS. Ll.
Keeper
Williams.

to twenty Knights Fees the former, and the latter to thirteen Knights Fees, and one third of a Knight's Fee, which is a Rule that was never observed in constituting Earls and Barons; for in the first *Norman* Reigns many held above twenty, thirty, or fifty Knights Fees that were not accounted Earls. This *modus tenendi parliamentum* is published by *W. Hakewell*, with his Additions out of the Journals of the House of Commons; but the Antiquity of the Manuscript is not allowed by the judicious Criticks, its placing the Peers in the House of Parliament, not agreeing with ancient or modern Custom. So Knights, Citizens and Burgeffes summoned to Parliament, must be looked for in succeeding Reigns.

Before I proceed to the *Norman* Reign I shall give an Account of the constituent Members of the *Saxon* Courts *de more*.

The *Saxon* Kings at the three great Festivals of the Year were attended by their great Counsellors, where the State of the Nation was considered of; and when any new Laws were found necessary they were made by the King with the Advice and Consent of the Nobles, who meeting at the King's Court of Residence at the great Festivals in Course without Summons, that Court obtained the Name of the Court *de more* or *ex more*, and none but the Nobility

sat either in Judgment or Consultation about new Laws with the King.

Tho' great Part of the Nobility attended the King's Court at the great Festivals, yet upon extraordinary Emergencies the whole Nobility was summoned by particular Writs to each, and the Cause of such Summons expressed in the Writs.

William the Conqueror ascertained the Places of holding his Court *de more* that the Nobility might always know where to attend the King.

In the ancient *Saxon* Reigns the calling *Cor. Posth.* the great Men of the Nation to Consultation, was *edito Principis*, at the King's Pleasure; *Alfred* having at Heart the Reformation of Laws and Manners, had an Assembly of his Ecclesiastick and Lay Nobles at the three great Festivals, and so it continued from his time, to the unsafe times of King *Stephen* and King *John*, when it returned again to the uncertain Summons of the King.

During the Wars between King *Stephen* and *Maud* the Empress, the Courts *de more* had Interruption, but were restored again by *Henry II.* and *Richard I.*

The Order and Degrees of the Members of the *Saxon Witenagemote* and Court *ex more* from King *Alfred's* time to *William I.* stood thus:

N

First,

Archaion
55.

Ll. Cnut.
55.

Wilkins 71.

Tit. Hon.
604, 632.

Tit. Hon.
619.

Tit. Hon.
611.

Bede. lib. 2.
cap. 9. lib.
4. cap. 12.

First, the Archbishop and *Etheling* are of the same Value or Estimation in *Æthelstan's* Laws of *Wergild*, the Saxon Word *Etheling* includes *Satrapa*, *Dux* & *Comes*, of Royal Race, and also the other great Dukes and Earls of Provinces or Counties.

The next Degree of Nobility, there, is the Bishop and Alderman or Judge of the County Court, who was of a lower Degree than the *Comes*, as appears in *Æthelstan's* and *Cnut's* Laws.

The third Degree was the *Holds* and *Highbgereves*: The *Holds* were military Commanders, and answer to Field Marshal and Knight Marshal: The *Highbgereve* was the Person to whom the King committed the Custody or Charge of a County where there was no Alderman, called in *Latin*, *Vicecomes*, *Vicedominus*, and in *French* *Vidome*.

The fourth and last Degree of Nobility was the *Mafs-Thegne* or *Thane*, and the *World-Thegne* or *Thane*, that is to say the King's Priest and the King's *Thane*, for every Priest or every *Thane* had not the Privilege of being Members of the *Witenagemote* or Court *de more*, only such as were the King's Ministers. The King's *World-Thane* that had some Office under the King, was a Member of the *Witenagemote* or Court *de more*. The *Mafs Thane* was a Priest that was the King's Chaplain, or a Dignitary

Dignitary of the Church, that had a superintendency over other Priests.

Now I proceed to the Members of the *Norman* Parliaments after the coming of *William I.* premising that the *Saxon* Nobility arose from great possession of Lands taken from the *Britons* or ministerial Offices under Kings, as Governors of Provinces, Counties, Tithings, Hundreds, Castles or Burghs, together with the Prelates and other Governors of the inferior Clergy: So the *Norman* Possessors of great Portions of Lands taken from the *English Saxons*, and high ministerial Offices under the Kings, were the *Norman* Nobility, the Earls and Barons that were Members of the *Norman* Parliaments, together with the aforesaid Ecclesiasticks.

King *William's* Commissioners sent into the several Counties of *England* to inquire what were the Laws and Customs of *England* in the time of King *Edward*, made their Report in *consilio Baronum*. His Laws were also made in *consilio Baronum*; and his Charter, wherein he separates the Ecclesiastical from the Temporal Jurisdiction, was made with the Advice and Consent of his Archbishops, Bishops, Abbots, Priors and Barons of the Realm.

The Temporal Members of Parliament in King *William's* Reign were the old

Tit. Hon.
631, 635,
666.

MS. Parl.
cap. 4.

The Antiquity of National

Saxon Thanes, that sided with King *William* and some few that stood neuter and were allowed to keep their Tainlands, and were stiled sometimes *Thanes* and sometimes Barons, but the former Title was soon after King *William's* Reign quite dropt.

The *Normans* that came over with Duke *William*, claimed according to Precontract, Shares of the *Saxon* Lands and Estates according to the Proportion of the several Undertakers, Retinue and Expence. *Roger de Montgomery, William Fitz Osborn, William de Warren, Roger Bigod*, and others that furnished out many Ships, and brought over many of their Vassals, at their own Expence, scrambled and got great Shares of the *Saxons* Lands, their great Possessions being confirmed by the King: The Possessor was called the King's Man, Freeholder or Baron, or the King's Tenant *in Capite*.

King *William's* Companions in Conquest had great Shares of *English* Lands committed to them to hold of the King in military Service, and were at the King's Call, to be ready to serve him in his Wars, and in the two first *Norman* Reigns were under absolute Command: In *Henry I's* time they began to obtain some Privileges, and in succeeding Reigns they contended with the Crown, and with Force defended their Properties, and at last obtained the great

great Charter of Liberties; from that time they grew so great and powerful that they extorted several Confirmations of the great Charters, and from the middle of King *John's* time grew too powerful for the Crown, till the politick Prince *Henry VII.* in gratifying their Luxury alter'd the Balance of Power: He gave Leave to the great Men to make Feofments of Knight Service Lands to the Use of their Wills without Licence; then they wasted apace their ancient Tenures and the Commons not then grown luxurious were ready to buy as soon as the Lords were ready to sell; of which I shall give a more particular Account when I come to the Reigns of *Henry VII.* and *Henry VIII.* in the Chapter of Privilege of Parliament.

7 H. VII.

3.

3 H. VIII.

4.

32 H. VIII.

1.

34 H. VIII.

5.

The King's Barons had Places of Honour at Court and in the Country, and were the great Barons, who took Titles from the Counties, Castles, Burghs, &c. that were committed to their Charge.

Such as held lesser Portions than these great Barons immediately of the King in military Service, were lesser Barons, but being Tenants *in Capite* had Right to come to the Parliament or Court *de more*, if they held forty Hides of Land *in Capite*, for under that Quantity of Land none were Members of the Court *de more* or Parlia-

The Antiquity of National

ment in King *William's* time, of which Sir *William Dugdale* gives an Instance, in the Preface to his *Baronage*, from a Record in the Register of *Ely*, viz.

Abbas Wulfricus habuit fratrem, Guthmundum vocabulo; cui filiam præpotentis viri in matrimonium conjungi paraverat; sed quoniam ille xl hidarum terræ dominium minus obtineret, licet nobilis esset, inter procures tunc nuncupari non potuit.

The Baronies or Tenancies in *Capite*, were great Tenures in *William I.'s* time, and had no Creation at all, either by Charter or Robe, but were Barons by their Tenure only; these were the great Barons and in King *Stephen's* time the great Baronies were split into lesser Tenancies, from whence arose the Distinction of *Barones Majores*, and *Barones Minores*; these latter were in after times termed Peers, when the Kings summoned them to Parliament to sit with the great Barons.

Selden's
Privilege
of Barons
p. 7, 9, 10.

Proxies in Parliament is a Privilege appropriated to the Lords only; and the first Instance of a Proxy in Parliament that occurs in the *Memoirs of Parliament*, is in that of *Carlisle* under *Edward I.*

And in a Parliament of *Westminster* under *Edward II.* the Bishops of *Durham* and *Carlisle*, were allowed to send their Proxies to Parliament.

In

Councils or Parliaments.

183

In those ancient times the Lords were not obliged to make Barons only their Proxies in the House of Lords as the Custom now is, but the Bishops and parliamentary Abbots usually gave their Letters of Proxy to Prebendaries, Parsons, Canonists, and such like, as appear in the Journals of the House of Lords; but since the first Year of *Henry VIII.* there appear in the Journals no Proxies but such as were Barons of Parliament.

These great Barons and Tenants *in Capite* were Members of the great Council of the Nation, owing Suit and Service to the King in his great Soke or Seignory of the Nation, as the Vavasors and Subinfeudatories of the King's Barons did to them in their Sokes or lesser Seignories, as the lesser Freeholders did Suit and Service to the Vavasor or Knight in his Hall-mote.

The great Barons that were made Earls of Counties, had the third Part of the Profits of County Courts, from Amercements, Fines, and Forfeitures. *Rex habebat C. Solidos & Comes comitatus L.* as in *Edward the Confessor's* Law. The third Penny that the Earl had Livery of, was his Creation Money, and he was not full Earl of his County, till the Sheriff had a Mandate to make Livery to him of the *Tertium denarium de placitis comitatus, ut inde fit Comes.* Some

Tit. Hon.
618, 635.

Ll. Ed.
Conf. 31.

Dial. Stat.
31.

Dugd.
Baron
Pres. 3, 4.

Earls were made by Charter, as *Geoffry de Mandevil* was made Earl of *Essex* by the Charter of *Maud* the Empress, and some by Investiture, *per cincturam cingulo comitatus*, but the first great Barons were Barons by Tenure only, without an Investiture or Charter.

Eadmer
67.

In *Rufus* and *Henry I.*'s time none were Members of Parliament but the Tenants in *Capite* which being great Tenancies did not make the Parliament consist of a tumultuous Number; till King *Stephen*, during his Wars with *Maud* the Empress and the Barons, as Baronies escheated, divided those Baronies into smaller Tenancies, and granted them to his Friends and Followers, who holding those Fragments of Baronies in chief of the King, produced the Distinction of Fees of the old, and Fees of the new Feofment.

Cam. Brit.
109.

Cambden
Apologia
11.

King *John* followed *Stephen*'s Method of splitting Baronies, as they came into the King's Hands by Attainders or Escheats; which increased the Barons to such a Number as to be termed by *Cambden*, *seditiosa & turbulenta multitudo*, as was the Parliament of *Oxford* in the 47th of *Henry III.*

There being before King *John*'s time the Distinctions of *Barones Majores & Barones Minores*, *Barones Regni & Barones Regis*, and Barons of the old and Barons of the new

185

Brady
Append.
131.

Mag.
Chart.
Joan cap.
17.

Mag.
Chart.
H.3. ca.31.

The Barons by Writ only, that had
not a whole Barony in Tenure, but part
of split Barony or none, paid Tenths with
the great Barons in proportion to their Te-
nure, were the Barons Peers, so often found
in Summons to Parliament, by the Titles
of *Autres Nobles, Grandees, Seigneurs,*
Baronets, and Chivalers: These were sum-
moned *ab libitum Regis*, and sometimes
expressed in the Writ, *hac vice tantum*, but
the

the King could not omit summoning the great Barons; as said in Page 182. The original great *Norman* Barons were so by Tenure only, but their Heirs were invested into the Honours of their Predecessors with the Ceremony of the Sword and Robe of the Dignity, which was not a new Creation but only Admission of the Heir into the Honour of his immediate Ancestor.

Instance or two out of many, may suffice to shew the Ancient Usage; *Rex cingit Thomam de Warwic cingulo Comitatus Warwici; & mandatum est Vicecomiti Warwici quod eidem Comiti habere faciat, id quod habere debet, nomine Comitis Warwici; & quo prædecessores sui Comites Warwici seignificaverunt, tanquam ad eos pertinente, nomine Comitatus Warwici:* This was Livery of the Earldom to *Thomas*, five of his Predecessors being Earls of *Warwick* before him; *Henry de Newburgh* being made Earl of *Warwick* by *William* the Conqueror, *Roger de Montgomery* Earl of *Arundel* and *Shrewsbury* and *William Warren* Earl of *Surry*, all made by *William* the Conqueror, by granting them the Castles and Possessions of the forfeiting *Saxon* Thanes: Some Tainlands were granted to the *Normans* with the Title of Earl, some with the Title of Baron according to the Terms in the Grant, was the Title of the Tenure, and the Succession

Dugd. Bar.
Pres. 3.

Claus. 17.
H. 3.

Dugd. Bar.
63.

Tit. Hon.
661.

Successors invested by the King, into the Honours of their Predecessors, by putting on Robe, Sword, Banner, &c. and a Charter given in this Form, *Nomen & honorem Comitatus vel Baronis*, &c. according to the Honour he succeeded to, by Right of Inheritance from his Ancestor.

The Baronies erected out of the Saxon Tainlands and the Baronies by Investiture, being without Limitation, descended to Heirs general, they being Baronies in Fee-simple, and from their Heiresses are descended, the present ancient Barons, *Abergavenny, Audley, de la Warre, Morley*, &c.

Now I proceed to other Barons of Parliament, the Barons by Writ, who when summoned to Parliament by the King's Writ, had Vote there as Peers to the old great Barons.

The Baron by Writ only was temporary and personal, the Writ not ennobling his Blood; the *Barones Minores* summoned to Parliament after the Battle of *Evesham*, were such as the King esteemed for their Learning, Wisdom and Interest, whose Advice and Service was looked upon to be of service to the King, and being once summoned by Writ, were generally so called during Life; the King not thinking fit to neglect or dishonour a Man of Character, that he had once honoured; but his Son

Par. Summons Preface.

or

or Successor was, or was not summoned to Parliament as the King pleased.

For Instance, *Ralph de Monthermer*, second Husband to *Joan of Acres*, Widow of *Gilbert de Clare*, Earl of Gloucester and Hertford, having a great part of the Earldoms in his possession in Right of his Wife was summoned to Parliament by *Edward I.* as an Earl, during the Minority of *Gilbert de Clare*, Son of *Joan of Acres*; and when *Gilbert* came of Age, he was invested into the Honour of the Earldom of Gloucester and Hertford, and after that *Monthermer* was no more summoned as an Earl, but because the King would not wholly dishonour the Man that had been honoured, *Edward I.* summoned him as a Baron in the second Year of his Reign, and in the other Parliaments to the nineteenth of his Reign when he died; and his Son and Successors were ever after omitted and not summoned to Parliament by his Successor *Edward III.* but in the eleventh of *Edward III.* *Edward de Monthermer* was summoned as a Baron.

Ralph de Camois was summoned to Parliament in the forty ninth of *Henry III.* and ranked in the Roll next the Earls above all the Barons; *John de Camois* his Son was not summoned to Parliament in the Reign of *Edward I.* and his Son *Ralph de Camois* was summoned to Parliament from the

Dan. of
Ed. 1.

Dugd. Bar.
217.

Parl.
Elsing 37,
53.

Parl. Sum.
67 to 129,
193, 194.

Baronage
217.

Parl. Sum.
193.

Parl.
Elsing 39.

Parl. Sum.
3, 93.

Dugd. Bar.
167.

the seventh of *Edward II.* to the ninth of *Edward III.* inclusive amongst the Barons; but neither he nor his Descendants were summoned to Parliament in all the rest of *Edward III.*'s time: In the seventh of *Richard the II.* *Thomas de Camois* was chosen one of the Knights of the Shire of *Surry*, which to be sure he would not have been, if he or his Predecessors had been Barons by Tenure of a whole Barony or made Barons by Investiture: *Dugdale* says, the first mentioned *Ralph de Camois* held half Barony.

Thomas de Camois petitioned the King to be discharged from serving as Knight of the Shire of *Surry*, and was discharged by the King's Writ, *quia ipse, & quamplures antecessores sui Banneretti fuerunt*; for so was the Barons Peers called, and also Chivaler, and in *Edward I.*'s time they were called *Milites*, and in King *John*'s time Tenants in *Capite*. Parl. Sum. 320.

After *Thomas* was discharged from serving as Knight of the Shire, King *Richard* summoned him to that very Parliament by Writ, and he was summoned to all the succeeding Parliaments to the eighth of *Henry V.* but *Richard Hugh*, and Sir *Robert de Camois*, Heirs and Successors of the said *Thomas*, were never summoned to Parliament.

Several

Antiq.
Parl. 83,
87.

Several other Peers in like manner, the Kings summoned to Parliament and omitted their Children and Successors, if they did not equal their Predecessors in Wisdom, Abilities, Valour, or other remarkable Qualities.

Parl. Elsing
40, 13.

Thus it appears that Summons to Parliament by particular Writ, did not convey hereditary Nobility to a Family, hereditary Nobility arising from the original Grants of the Saxon Tainlands of the King's Thane to the first great Norman Barons, and afterwards by Investiture with Sword and Robe.

Brady's
Tracts 76.

with a Charter expressing the Degree, whether of Earl or Baron. Investiture made the hereditary Nobleman, and Charter distinguished the Title whether of Earl or Baron.

Jan. Ang.
23.

The ancient Barons by Tenure and Investiture, were in Parliament Summoned stiled *Barones*, and sometimes *Domini*; but the minor Barons or Peers, were stiled Barons or Bannerets, and after the French

Mack.
Precedency 131.
Parl. Summons 287,
289. &c
passim.

Wars in Edward III.'s Time, the Peer was stiled Chevalier and not Baron; Chevalier being a Title of Dignity, and Baron of Possession, as the King's Man or Baron, that held a Castle or fortified Burgh by Grant from the King with Honours and Manor annexed to the Castle or Capital of his Baronry. Barons were originally created by

Salkeld
vo. 2. 509.

Te

tenure, afterwards by Writ, and last of all Patent, says *Salkeld*.

Sir *William Dugdale* in the Preface to his second Tome of the Baronage says, that *Edward I.* summoned to Parliament not only such as were Barons by Tenure, but such other Persons of Note, as the King esteemed for their Wisdom and other Qualifications, whose sitting there upon one or more Summons, did not entitle their Descendants to a hereditary Right thereto. Some there were that had but one Summons, others more, yet their Descendants not summoned.

Sir *Edward Coke* says, if a Man be called *1 Inst. 9. 16.*

by Writ to the Parliament, and come and sit in Parliament pursuant to such Writ, his Blood is thereby ennobled; which don't agree with the preceding Instances of *Montfermer* and *Camois*, and the many others of the like Kind that appear in the Summons to Parliament. If a Person have Investiture, and is called by Writ and sits in Parliament, he is Earl or Baron according to the Investiture and Writ.

If the Writ without Investiture of Sword *Parl. Summons passim.* and Robe did ennoble the Party, then were

the King's Judges, the King's Serjeants at Law; divers Deans and Archdeacons being *Parl. Elsing 36.* Treasurers, Keepers of the Privy Seal and other Ministers, and privy Counsellors ennobled in several Parliaments of *Edward I.*

Ed-

Edward II. and Edward III. for they then had Writs to meet and sit with the Earls and Barons. And these to be sure were neither Barons nor Barons Peers, being summoned during their continuance in Places under the King and no longer.

4 Inst. 4.

Sir Edward Coke shows the Difference in the Form of the Writs to the Barons, and of those to the Justices of the Benches, &c. The Form to the Barons is (says he) *quod interfitis cum praelatis, magnatibus & proceribus, &c.* and the Form of the Writs to Justices of the Benches and their Fellows *quod interfitis nobiscum & cum cæteris de consilio nostro.* But that Distinction was not always observed in Parliament Writs, for

Parl. Summons 49.

in the Thirty third of Edward I. in the Writ to Henry Lacy Earl of Lincoln, is *quod interfitis, tractaturi nobiscum & cum cæteris de consilio nostro*; which is the Form Lord Coke appropriates to the Justices, as the usual Difference in the Writ to the Justice from that to the Barons.

Rel. Spel. 62.

Benedict Abbot of Peterburgh in his Account of Henry II.'s Parliament at Northampton, holden there, *de statutis regni* (says

Ben. Abbas 86.

he) *coram Episcopis, Comitibus & Baronibus & per consilium militum & hominum suorum*

4 Inst. 45.

&c. Here *militum & hominum suorum* extend to a Degree below the Barons, which were the Tenants in Capite, not per Baroniam

niam, and were not summoned by special Writ, but by a general Writ to the Sheriff, as in King John's *Magna Charta*, which Tenants *in Capite*, *minores Barones*, or Barons Peers, were by a subsequent Law, not to come to Parliament without special Summons, which in time proved to whom only, and when, the King pleased as before.

Brady's
Tracts
76, 78.
Parl. Sum-
mons Pre-
face.

In the *Saxon* Reigns every Bishop was a Member of the *Witenagemote*, and their Possessions were *Frank almain*, which the Conqueror made subject to Knight Service, and every Bishop held his Possessions by Barony, and was a Member of the *Norman* Parliaments, and so were twenty six Abbots and two Priors that held by Barony: Several other Abbots and Priors that did not hold by Barony were frequently summoned to Parliament as were the Peers, and omitted when the Kings pleased.

MS. Parl.
2 Inst. 385.

The Abbot of *St. James* by *Northampton* being in the twelfth Year of *Edward II.* summoned to Parliament as a Baron, petitioned to be erased out of the Roll of Barons, he not holding by Barony or Knight-Service *in Capite*, his Possessions being *Frank almain*; and his Name was erased out of the Roll, as he desired.

Tit. Hon.
731, 734.

The Abbot of *Leicester* being summoned to Parliament as a Baron, petitioned the King to be erased out of the Barons Roll, for that

4 Inst. 43,
49.

that his Abby was founded by *Robert de Belamont* Earl of *Leicester*, and consequently not held *in Capite*, for which Reason the King did grant, *quod idem Abbas, & successores sui de veniendo ad Parliamenta & Consilia nostra, vel hæredum nostrorum quieti sint & exonerati in perpetuum.*

MS Lord
Keeper
Williams,
p. 82.

In the fifteenth of *Edward I. A. D. 1296*, an Act of Parliament was made by King and Lay Barons (*Clero excluso*) as it is reported by *Juel* Bishop of *Salisbury* against *Harding*. Folio 620.

Cotton's
Records
322.

And in the eleventh of *Richard II.* an Act of Parliament was made, though the Lords spiritual absented themselves.

Tit. Hon.
751, 755.

The ancient great Barons by Tenure having obtained such singular Privileges to themselves by the great Charter of King *John*, and by Concessions of *Henry III.* the Kings took the Consent of the Barons in Parliament in making Barons by Grants of escheated Baronies, and in advancing Barons and Earls to higher Titles as *Edward III.* in Parliament made his Sons Dukes, by investing them with the Sword and Caps of that Degree, and their Charters were signed and sealed by the King, *his Testibus*, viz. the Bishops and Barons in Parliament.

Cotton's
Records
310, 325,
332, 363,
370.

Richard II. in the Parliament of the twenty first of his Reign made five Dukes, viz
Henry

Henry Duke of Hereford, Thomas Duke of Surry, John Duke of Exeter, Edward Duke of Albemarle, and Thomas Duke of Norfolk, with the Consent of Parliament, as appears in their Charters, viz. *Affensu Prælatorum, Ducum, Magnatum, &c.* But these Dukes made no increase of the Number of the great Barons, they being Earls before; and the King thought fit to have the Consent of the Barons and Earls when he intended these five great Men should have superior Title, and preceed the other great Earls.

Daniel 2d part fol. 23. Brady 2 vol. 392, 399.

Richard II. introduced a new Manner of creating Nobility, which was by Letters Patent, and from that Time the Ceremony of Investiture began to be disused; for the Person ennobled had in his Patent Grant of Sword, Robes, and all the other Ornaments and Privileges of Barons by Tenure or Investiture, and was (upon Solemnities) intitled to appear in the Robes of the Degree conferred on him in his Patent, whether of Duke, Earl or Baron.

John de Beauchamp Steward of the Household to Richard II. was by him created by Patent a Baron, by the Title of Lord Beauchamp of Holt, Baron of Kiderminster, to him and his Heirs Male, and this the first Baron that was created by Patent only, before which Time all Barons were by Writ, Possession, and Investiture.

Dugd. Baron. 250. Parl. Elsing 34. Daniel 2d part fol. 18.

9 H. III. 2.
13 Edw. I.
cap. 42.

The holding *per Baroniam* a whole Barony often occurring in the ancient *English* Historians, I shall endeavour to show what was a whole Barony: The pretended ancient Treatise termed, *Modus tenendi Parliamentum*, says an Earl's Tenure must be twenty Knights Fees, and a Baron's, thirteen Knights Fees, and one third of a Knight's Fee; which Rule won't agree with Fact, for Instance.

Madox.
464.

Roger Bigot Earl of Norfolk paid Aid to Henry III. for one hundred and twenty five Knights Fees, and for thirty seven and half *De novo Feofamento*, yet he held his Earldom but by five Knights Fees.

Dugd. Baron. 326.

Geffry de Talbot held twenty Knights Fees of Henry I. and was neither Earl nor Baron, and none of his Successors summoned to Parliament till Gilbert de Talbot was in the fourth Year of Edward III. and then as a Banneret or Baron's Peer, he not being a Baron.

Summons
Parl. 156.

Dugd. Baron. 325.
Willis
2 part 3c.

Robert de Courtney in the seventh of King John had Livery of the Barony of Okehampton, in Right of his Mother Baroneſs of Okehampton, and Robert held with the Barony ninety two Knights Fees *in Capite* and yet was not an Earl, which Title the Family did not enjoy till in Edward III.'s Time, Hugh Courtney was Earl of Devon by being descended from Isabel de Fortibus Countess of Devon.

The

The whole Barony is only a Distinction from the split Baronies in King *Stephen's* and King *John's* Time; for that Castle or Honour was a Barony that was granted by *William the Conqueror per Baroniam*, whether there were five or fifty Knights Fees granted in Barony, there was no certain Number of Knights Fees in a Barony. The Distinction of whole Barony in *Magna Charta* is only to ascertain the Reliefs. Holding one hundred Knights Fees in *Capite* of the King in Knight Service, will not make such King's Tenant a Baron; but he that held but three Knights Fees in Barony, was as much a Baron of Parliament, as he that held a hundred Knights Fees in Barony.

In *Henry II.'s* Time, the Lord of *Berkley* Tit. Hon. Castle held by five Knights Fees in Barony, 741. and by Inquisition taken in *Edward III.'s* Time, it was found that the Lord of *Berkley Castle* held by Barony by no more than three Knights Fees, yet it was determined, that he was a Baron of Parliament. The Conqueror's Baron was he to whom he committed the Government of a Castle, Burgh or Tithing, to hold of him as his Man or Baron, and the Earl had the Command of a whole County committed to him to hold of the King as his Man.

The Reliefs of Earls and Barons being uncertain before *Magna Charta*, they were 9 H. III. 2.

1 *Inst.* 9. 16.
69. 83. 97.

13 *Ed.* I.
41.

therein ascertained, that the Earl should pay for Relief for a whole Earldom a hundred Pound, and for a whole Barony a hundred Marks, and Reliefs being the fourth part of the Value of the Fee, consequently the Value of a whole Earldom in *Henry III.*'s Time was reckoned four hundred Pound a Year, and a whole Barony four hundred Marks a Year, and they that had less, should pay less. Whole Baronies and part of Baronies are also mentioned in *Westminster* the second.

The Heir of a Knight was by *Magna Charta* to pay 5 *l.* for Relief, which being a fourth part of the annual Rent of the Fee, the Knight's Fee was 20 *l.* *per Annum* and the whole Earldom twenty such Knight Fees, and a whole Barony thirteen Knight Fees, and one third of a Knight's Fee.

Madox
464.

The whole Barony in *Magna Charta*, and the old Historians relates only to Reliefs *Bigod* in *Henry III.*'s Time as before held his Earldom by but five Knights Fees, paid Relief for his Earldom but at the Rate of five Knights Fees, *viz.* 25 *l.* but then he paid Relief for the rest of his Knights Fee according to the Number he had, which was above a hundred and fifty besides the five annexed to his Earldom.

In *Henry II.*'s Time, the Lord of *Berkley Castle* as before, held by five Knights Fee

in Barony, and in *Edward III.*'s Time, he held but three Knights Fees by Barony, and the Barony was to pay but 15 *l.* for Relief; but then he was to pay Relief for such other Knights Fees as he held, that were not held in Barony.

The pretended ancient *Modus* seems to be taken from *Magna Charta*, and not *Magna Charta* from that.

The Barony by Tenure was Fee-simple to him, and his Heirs general; upon the Death of such Baron, the Son had Investiture into the Honour of his Father, as an honourable Confirmation of precedent Right, a Livery of his Predecessor's Honour, as *Hoveden* in the Case of an Earl, *Accingere gladio comitatus patris sui*. King *John* invested *William Martial* with the Sword of the County of *Pembroke*, and *Geofry de Mandevil* with the Sword of the County of *Essex*, and this was not a new Creation, but Livery of their Earldoms to them, they being in Right of their Wives both intitled to Earldoms, *Martial* having married the Daughter and Heir of *Richard de Clare* Earl of *Pembroke*, and *Geofry de Mandevil* Son of *Beatrice* Daughter and Heir of *William de Mandevil*, Earl of *Essex*: This Livery was the King's Favour, for they were not Heirs, tho' their Sons would have been to those Earldoms in Fee-simple. The Hus-

Tit. Hon.
677.

bands were in Possession of their Ladies Earldoms, and sat for them in Parliament.

Before I conclude this Chapter of the noble Members of great Councils or Synods, I must take in what Antiquity affords us of the Ladies.

*Plutarch
de virtut.
mul.*

Plutarch says, Women had the Prerogative to sit and deliberate in great Councils, in Cases relating to civil Administration, and also in Debates about Peace and War.

*Tacitus
vita Agri-
cola.
Epinomis6.*

And *Tacitus* speaking of the *Britons*, says, *Sexum in imperiis non discernunt.* The mag-

nanimous Heroine *Boadicia* Queen or Princess of the *Iceni*, so successfully command-

*Tacitus
Vita
Agricola.*

ed the *British* Armies, as to beat and conquer the *Roman* Vice-Roy, or Lieutenant

Suetonius Paulinus: And no doubt, that noble Lady was a deliberative Member of the

Council where the Resolution was taken to fight the *Romans*, and that she should com-

mand the Forces. And *Cæsar* says, the *British* Women were made use of in Court,

in Council, and in Camp.

*Bernard
359.*

Heliogabalus introduced his Mother into the Senate, and she took her Place there by the Seats of the Consuls, and was present at passing a Decree of the Senate. This

*Ælius
Lampri-
dius.*

Emperor made the first Senatress, he created a little Senate of Women, which met on

*Hatchet
271.*

Collis Quirinalis, under the Direction of *Semiamira*, and the Laws they made concern-

ing

ing the Ladies, are, what Cloaths every one should wear, who should give Place to whom; who should salute whom, who go in a Coach; who ride upon a Horse; who upon an Ass; who go in a Litter drawn by Mules; who to be drawn by Oxen; who carried in a Chair; and whether the Chair should be of Leather, or inlaid with Bone, or Brass, or Ivory, or damasked with Silver; and who should wear Gold or Jewels on their Shoes, and such like Laws, particularly mentioned by *Ælius Lampridius* in his Life of *Heliogabalus*.

The Roman Matrons anciently used to assemble in Council upon certain Occasions, in which Assembly the Priestesses, that is, such as were by the Law devoted to the Service of the Gods, had the Preheminence. *Flavius Vopiscus* in his Life of the Emperor *Aurelian*, says, that Emperor was for setting up a Senate of Women, for reviving the ancient Privileges of the Roman Women, but he lived not to finish it.

The Ladies of Birth and Quality sat in Council with the *Saxon Wita's*; the Abbess *Hilda*, says *Bede*, presided in an ecclesiastical Synod.

In *Wightred's* great Council at *Beconceld*, A. D. 694, the Abbesses sat and deliberated, and five of them signed the Decrees of that Council along with the King, Bishops, and Nobles.

Bernard
2 vol.
p. 234.

Bede lib. 3.
cap. 24. p.
135. lib. 4.
cap. 23, 24.

Spel. Com.
Tom. I.
p. 189,
191, 348.

In

Savil. Edit.
Ingulph.
362.

In *Ethelwolf's* Parliament at *Winchester*, *A. D.* 855, wherein the tenth Part of the Kingdom was given to the Church, the Law passed, says *Ingulphus*, *Præsentibus & subscribentibus Archiepiscopis, & Episcopis Angliæ universis, nec non Beorredo Rege Merciæ & Edmundo East-Anglorum Rege, Abbatum & Abbatissarum, Ducum, Comitum, Procerumque totius terræ, aliorumque fidelium infinita multitudine, qui omnes Regium Chirographum laudaverunt, Dignitates vero sua nomina subscripserunt.*

MS. Lord
Keeper
Williams

25.
Ant. Parl.

75.
Tit. Hon.

729.

Pat. 5.
Ed. 1.

King *Edgar's* Charter to the Abby of *Crowland*, *A. D.* 961. was with the Consent of the Nobles and Abbesses who subscribed the Charter.

Parl. Sum-
mons 265.

Ant. Parl.
38.

In *Henry III.* and *Edward I.'s* Time, four Abbesses were summoned to Parliament, viz. of *Shaftsbury*, *Berking*, *St. Mary of Winchester*, and of *Wilton*.

In the thirty fifth of *Edward III.* were summoned by Writ to Parliament, to appear there by their Proxies, viz. *Mary Countess of Norfolk*, *Alienor Countess of Ormond*, *Anna Despensers*, *Philippa Countess of March*, *Johanna Fitz Water*, *Agneta Countess of Pembroke*, *Mary de St. Paul*, *Countess of Pembroke*, *Margaret de Roose*, *Matilda Countess of Oxford*, *Catherine Countess of Athol*. These Ladies were called, *Ad Colloquium & Tractatum* by their Proxies, and

Pri-

Privilege peculiar to the Peerage to appear and act by Proxy.

C H A P. IV.

The Procuratores of the Saxon Witenagemote; and the Knights, Citizens, and Burgesses of the Norman Parliaments.

IN the preceding Chapter I have treated of the *British* and *Saxon* Nobility that were Members of the national Councils. In this Chapter I shall show in what manner the inferior People's Interest was taken care of in Parliament.

As to the *British* Councils (as before mentioned) the Members were the *Edlins*, *Druides*, and Governors of the People, these appeared in Person, represented themselves as the Nobility now do, and took upon themselves the Care of the Interest of the People within their several Jurisdictions.

When the *Saxons* conquered the *Britons*, the general Leader and the *Capitanei* divided the *Britons* Lands amongst themselves by Agreement, in Proportion to the Number each Captain commanded, he being obliged
to

to provide for the Men in peace that were under his Command in the War.

These Captains were the Members of the *Saxon* Councils, the Commanded had no certain Estate in the Land they occupied, being removeable at the Pleasure of their Lord the Captain or *Thane*, were not Members of the Common-wealth; the whole Interest in Land being in the *Thanes*, who were the *Saxon Wita's* or Nobles, and were the standing Members of the *Witenagemote*, they being the King's Collegues and Companions in War and in Council.

In process of time, the *Churles*, i. e. Husbandmen (by the Indulgence of the *Thanes*) got some Property in Land, from being at first Servants in War and in Peace, in time grew up to be Tenants at Will, yielding and paying uncertain Rents and uncertain Services; from a farther Indulgence or Indolence of the *Thanes* in taking from the Son of a Tenant, the same Rent and the same Services yielded by his Father, there grew up a certain Interest in the Tenant, in the Lands he occupied under the *Thane*, wherein by long Usage and Custom he had got such an Interest, as not to be removed from his Tenancy at the arbitrary Will and Pleasure of his *Thane* or Lord.

The *Thanes* in the great Councils represented their Tenants, and took care of their
In-

Interests there, but when the *Churles* had obtained a certain Estate in the Lands they occupied, being free'd from the arbitrary Will and Pleasure of their Lords, they voluntarily appeared at the great national Assemblies of the *Wita's*, to see and hear what new Laws were made, and in what manner they were to pay obedience thereto. How they appeared at great Councils, and what Interest they had there, shall appear in the Sequel.

The first faint Glimpse that History affords us of the *Churles* or Commons having Representatives in the *Saxon Witenagemotes*, was in that held under *Kenwolf* King of *Mercia*, A. D. 811, where a Charter was signed by the King, who therein particularly recites the several Degrees of Men present at that Assembly, viz. *Merciorum Optimates, Episcopos, Principes, Comites, Procuratores, meosque propinquos, nec non Cuthredum Regem Cantuariorum atque Suthredum Regem Orient. Saxon. cum omnibus qui testes nostris Synodalibus Conciliabulis aderant.*

Tyrol
XCV,

Annals of
Winchel-
comb.

The next *Saxon* King in whose Time is any mention made of the Commons being present at a great Council is *Ethelwolf*, who in the Year 855, held a *Witenagemote* at *Winchester*, wherein the Tenth of the whole Nation was given to the Church by the King,

Savil's
Edit. of
Ingulph.
863.

King, Baronibus & populo infinita multitudine, qui omnes Regium Chirographum laudaverunt, Dignitates vero sua nomina subscripserunt, as before mentioned in the Paragraph of Ladies in Parliament.

Æthelstan held a *Witenagemote* at London wherein were made the *Judicia civitatis Lundoniæ*, by the Advice of the Bishops, Earls, and Aldermen, to which Constitutions, *tam comites quam coloni* swore Observance.

Acta Regia
41.

Æthelstan's Charter to the Abby of *Abbingdon* mentions *procuratores*; *Hæc Charta in villa regali quæ Ætwelope nuncupatur, Episcopis Abbatibus, Ducibus, patriæ procuratoribus, regia dapflitate orantibus perscripta est.* This Charter was not made in Parliament, being wholly the King's Bounty, and witnessed and approved by the Nobles and others that were present, who all applauded the King's religious Generosity.

Archæion
97.

4 *Inst.*
320.

Canute in the first Year of his Reign held a *Witenagemote ex more* at *Winchester*, at *Christmas* Festival, where his Code of Laws was made with the Advice and Consent of his Nobles.

Canute in the fifth Year of his Reign, held a *Witenagemote* of his Archbishops, Bishops, Dukes, Earls, Abbots, *cum quamplurimis gregariis militibus, ac cum Populi multitudine copiosa.*

In

In *Edward the Confessor's Law de Apibus*, ll. Ed. Conf. 8.
a Tenth is confirmed to the Church, à Re-
ge, *Baronibus & Populo*.

In the *Witenagemotes* of the last mentioned Kings upon a cursory View of the Laws, the common People seem to have some Share in consenting to them: How far their Consent was necessary I now proceed to show.

To begin with the *Witenagemote* of King *Kenwolf*, where is the first mention of *procuratores*; but those I take to be rather Proxies for absent Nobles than for the common People, from the Manner of placing them next to the Earls and before the Kings *propinqui*; Order or Precedency of Degrees being observed in those times, it is very improbable that Proxies of the common People should be placed before the King's Relations.

The next *Witenagemote* where is any Prid. Tib. 175.
mention of Commons is that of King *E-*
thelwolf, where it seems were assembled a
Multitude of People, when the Law was
made that granted the Tenth to the Church,
in *Ingulph's Words*, viz. *Præsentibus, & sub-*
scribentibus, Archiepiscopis, & Episcopis An-
glia universis, nec non Beorredo Rege Mercia,
Edmundo East-Anglorum Rege, Abbatum &
Abbatissarum, Ducum, Comitum, Procerumque
totius terræ, aliorumque fidelium infinita mul-
titudine,
Savil. Edit. Ingulph. 863.

The Antiquity of National

titudine, qui omnes Regium Cbirographum laudaverunt, Dignitates verò sua nomina subscripserunt. 'Tis plain from this Account of *Ingulph*, that the enacting Part was by the King and Nobles only; and that the common People was not Party thereto, they only applauding what the King and Nobles did; for none signed the Law but the Nobles.

Tho' *tam Comites quam Coloni* swore to the Observance of *Æthelstan's judicium civitatis Lundoniæ*, yet the enacting Part is entirely and solely in the King, the Bishops, Earls and Aldermen, as appears by these Words, *Hoc est consilium quod Episcopi & Præfecti edixerunt*, as mentioned in the third Chapter of the Lords in Parliament.

Tho' *Edgar's Witenagemote* at *Wulsamere* was so numerous that no Room could hold them, yet it appears not, that the Multitude were any otherwise concerned in confirming the Charter there made, than by giving a popular Applause to what was done by the King and Nobles.

Canute's Witenagemote of Archbishops, Bishops, Earls, Abbots, *cum quamplurimis gregariis militibus, ac cum populi multitudine copiosa*, is of the same nature with the before-mentioned, the Multitude of People were only Spectators, who generally flocked to the Courts *de more* to be Spectators of the

the King's Magnificence, when they set at the Head of there Nobility with Crown and Royal Robes, when there was plentiful and splendid Feasting as well as Consultation about the publick State of the Nation.

The Confessor's Law *de Apibus, à Rege, Baronibus & Populo*, carries some Shadow of the Commons Consent to that Law, but his Law *de Regis officio*, shews the Substance in these Words, viz. *debet etiam Rex omnia ritè facere in regno, & per judicium procerum regni*; and farther in the same Law, *debet judicium rectum in regno facere, & justitiam per consilium procerum regni sui tenere*, as before mention'd in the Chapter of Barons. What were the *Proceres* in the last mentioned Law is well accounted for in his twenty first Law, *de Baronibus qui suas habent curias & consuetudines*, viz. *Archiepiscopi, Comites, Barones, & omnes qui habuerint Sacam & Socam, Thol, Theam & Ingfangthefe, etiam milites suos, & proprios servientes, scilicet dapiferos, pincernas, camerarios, pistoros & cocos sub suo Friburgo habeant: Et item isti suos armigeros vel alios sibi servientes sub suo Friburgo. Quod si cui forisfacerent, & clamor vicinorum de eis assurgeret, ipsi tenerent eos rectitudini in curia sua; illi dico qui haberent Sacham, Socam, Thol, Theam & Ingfangthefe. i. e. Lords of great Seignories.*

Ll. Ed.

Conf.

3. 17. 21.

P

From

From the last mentioned Law may be gathered, that the Knights mentioned to attend *Canute's Witenagemote* were not constituent Members thereof; for the lowest degree of Members of the *Confessor's* Parliament, were such as had Knights dependant on them in their Friburgh, Soke or Seignory, and these great Men represented themselves, and also the Knights and Freemen of their Seignories. The *Theow* or under *Thane* that was a Dependant upon the great *Thane*, was not a Member of the *Saxon* Parliament, being represented there by his Chief, his *Thane*, as the *Norman* Vavasor or Knight, that held of a great Baron in mean Tenure, was not a Member of the *Norman* Parliament, he being represented there by his great Baron of whom he held.

Orig. Jur.
16.

Now I proceed to the Commons of the *Norman* Parliaments: *William* the Conqueror in his Charter of Ratification of the Liberties and Privileges of the Church of *Westminster*, instead of *cum multis aliis* hath these Words, *cum multis præterea illustrissimis virorum personis & regum principibus diversi ordinis omissis, qui similiter huic confirmationi piissimo affectu testes & fautores fuerunt. His etiam illo tempore à Regia potestate è diversis provinciis & urbibus, ad universalem Synodum, pro causis cujuslibet Christianæ Ecclesiæ audiendis & tractandis,*

ad

ad præscriptam celeberrimam Synodum, quod Westmonasterium dicitur, convocari, &c.

These of divers Orders summoned from Counties and Cities, were not Knights, Citizens and Burgeſſes (as ſome would have them) but were Eccleſiaſticks of ſeveral Orders and Degrees, that were ſummoned to that Synod; for the Commons never had authority given them by the Writ of Summons, in after times, ſo general as the Words, *audiendis & tractandis* aforeſaid imply.

When the Commons were regularly called to Parliament by Edward I. the Summons to them was only, *ad audiendum & faciendum & conſentiendum*, whereas the Summons to Biſhops and Barons was *de arduis negotiis regni tractaturi & conſilium impensuri*. The Commons were not conſulted in State Affairs about Peace or War, or making of Laws, their Buſineſs being only to conſent to Laws made by the King and Barons, and to conſent to Aids and Subſidies and ſuch like, *ad habendum commune conſilium regni de auxiliis affidendis*.

The firſt Part of the Writ to the Commons, is to conſent to ſuch ordinances as the Peers ſhall make; the next Part of the Writ, is to hear and do what the King ſhall farther require of them: This is the Subſtance of the ancient Writs, the farther Enlargement of the Privileges of the Commons

Parl.
Antiq. 24.
34.
Parl. Sum.
7.
4 Inſt. 10.
Parl. Sum.
Preface.
Rel. Spel.
64.
Filmer,
127, 126,
Journal
18.
James 192.

mons in Parliament will appear in the Chapter of Privilege.

Paris
Anno.
1100.

Archaion,
175.

Henry I. (says Matthew Paris) summoned to his Coronation *Clerus Angliæ & Populus universus*: The King in his first Law owns his Election to be made by the Barons only, in these Words, *Sciatis me Dei misericordia & communi consilio & assensu Baronum Regni Angliæ ejusdem Regni Regem coronatum esse*, and in his second Law, the Consent of the Barons is mentioned, but Consent of Commons occurs not in any of the ninety four Chapters of his Laws; from whence I conjecture Paris's *Clerus & Populus universus*, may be rendered in English Lords Spiritual and Temporal.

Eadmer and Florence of Worcester who flourish'd in this Henry's Time make no mention of Commons in the Parliament of Salisbury.

Eadmer,
67, 117.

Eadmer's Words are, *factus est conventus Episcoporum, Abbatum & Principum totius regni apud Sersberiam*, instead of his Word *Principum*; other Authors make use of *Baronum*, which in this Case is the same, both Words meaning the great Tenants in *Capite per Baroniam*.

Florence calls this Parliament *conventio Optimatum & Baronum totius Angliæ apud Salisberiam*.

Polydore Virgil and his Followers from the *populus universus* Paris, advance that the Commons were a constituent Part of Henry

Henry I's Parliaments, and not a tumultuous Body of the People, the People in gross but a select Number; as the *populus Romanus* was not all the People of Rome, but only those who had a Vote in the passing or rejecting a Law; but none of them make out now Commons were elected in Henry I's time to represent the People.

As said before, the People voluntarily went to the Courts *de more* and generally applauded such Laws as were made by the King and Nobles, which to them was Satisfaction that all the By-standers approved of their Decrees, as an ancient Author expresses it, *tum demum leges vim & vigorem habuerunt, cum fuerunt non modo institutæ, sed firmatæ approbatione communitatis.* Mirror
Pref.

King Stephen in his Charter of Confirmation of Liberties, owns himself to be chosen by Clergy and People in these Words, *Ego Stephanus Dei Gratia assensu cleri & populi in Regem Angliæ electus*: The *cleri & populi* therein mentioned, can't be extended any farther than Lords Spiritual and Temporal, there being no mention in the Charter of *milites* or *liberi homines*. Malm-
bury.

There appears no Hint of parliamentary Commons in King Stephen's time; he indeed made the Members of Parliament more numerous than before, by splitting Baronies that fell into his Hands by For-

feiture, into small Tenancies, which being held in *Capite per Baroniam*, the Possessors of them were all Members of Parliament, which proved such a Grievance to the great old Barons, that they contrived a Redress in the *Magna Charta* they obtained of King John.

Ben. Abbas
36.

The Account of Henry IId's Parliament of Northampton as given by Benedict Abbot of Peterburgh mentions Knights, thus, *circa festum S. Pauli venit Dominus Rex usque ad Northampton & magnum ibi celebravit concilium, de statutis regni sui, coram Episcopis, Comitibus & Baronibus terræ suæ & per consilium militum & hominum suorum.* The *militum & hominum suorum* are his Tenants that held of him in *Capite*, not elected Knights to represent the Freeholders, but were Barons Peers, as all Tenants in *Capite* were, and summoned when the King pleased. Paris, Wendaver and Gervase all agree that the King's Tenants in *Capite* were summoned to that Parliament, viz. *tenere de Rege in Capite, habere possessiones sicut Baroniam*, and none of them mention any other Knights. These Tenants in *Capite* are not expressed to hold *per Baroniam*, but *sicut Baroniam*.

In the seventeenth of King John, *Anno Dom. 1215.* the Barons obtained a Confirmation of ancient Liberties and new Privileges

privileges and for the more firm establishing them, it was conceded by the King, that the Barons should choose twenty five of their own Body to have Power over all Judges, Justices and Ministers to see the great Charters observed; but as yet no Representatives of the generality of the Commons in Parliament.

By King *John's* Charter the great Barons were to have particular Summons, and the rest of the Tenants *in Capite* were to be summoned in general by the Sheriffs; so many small Tenancies being made by King *Stephen* and King *John* that the Tenants *in Capite* made the Parliament too tumultuous and numerous, wherefore the Sheriffs returned Proxies for them, but not for the Freeholders in general; for such as held freely of the great Barons, were by them represented, they taking care of their Tenants Interest in Parliament: The common People were represented in Parliament by their chief Lords of whom they held.

In the thirty second of *Henry III.* Anno Dom. 1258, in the Parliament of *Oxford* it was agreed that twelve Persons should be chosen to represent the Commons in Parliament, but those elected were Bishops, great Barons and Tenants *in Capite*, as were the Patrons of the *Roman Plebeians* chosen out of the *Patricians*: These Representa-

tives of the Commons were chosen by Ver-
tue of the Constitutions of *Oxford*, which
both King and Barons swore to observe,
but these Constitutions were soon dropt,

This King in Consideration of Subsidies
made frequent Concessions to his Barons
and People, which were not very lasting
in his unsettled Reign.

Rot. Paten,
42. H. 3.

In the forty third Year of his Reign he
sent a Charter to each County of *England*,
publishing his Resolution to take the Ad-
vice of his Parliament, and in the Charter
expresses who were to be the Members
thereof. The Charter is writ in the *Norman*
Saxon Dialect and Character, translated into
Latin by Mr. *Somner*, so much of it as
relates to my Subject, is in these Words,
viz, Vobis omnibus notum facimus, quod vo-
lumus & concedimus, ut quod consiliarii nostri
omnes, sive major pars eorum, qui fuerint
electi à nobis & à gentis plebe, &c.

Somner's
Dict. voce
Unnan.

Those Members of Parliament that were
included in the Words, *electi è nobis*, were
the great Barons that had particular Letters
of Summons directed to each one of them;
those meant by *electi à gentis plebe*, were
such as were returned by the Sheriffs, which
were the lesser Tenants *in Capite*. In those
early Days there was a great Power in
the Sheriffs, the King's Officers, in return-
ing the King's Tenants; they were to re-
turn

turn all, but many got themselves excused by agreement amongst themselves, and the Sheriffs, those that went, were the *electi à gentis plebe*.

And the Sheriffs were afterwards very partial in returning Burgesſes for Boroughs, they returning Burgesſes for ſuch Boroughs as they pleaſed and omitting others, till Acts of Parliament were made to direct and regulate their Proceedings.

Henry III. being under great Difficulties with his Barons and great Men in the forty ninth Year of his Reign ſubmitted to have a Parliament called in ſuch Manner as the Barons directed; and *Simon Montford* Earl of *Leiceſter* being the Head of the confederate Barons, that Parliament was generally called *Montford's* Parliament.

In this Parliament of the forty ninth of Parl. Sum. the King, he ſent Writs to the Biſhops, Abbots, Priors, Earls and great Barons particularly, and to the Sheriffs of the ſeveral Counties to return two Knights for each County, two Citizens for each City, and two Burgesſes for each Borough. And this was the firſt Parliament of Lords Spiritual and Temporal, Knights, Citizens and Burgesſes, when the King was in the Hands of *Montford*.

After the Defeat of *Simon Montford* and the Barons at the Battel of *Eveſham*, the King's

King's Affairs took a Turn to his Advantage, and to the rest of the Parliaments of his Reign he summoned none but Lords Spiritual and Temporal and Tenants in *Capite*, wholly dropping Knights, Citizens and Burgesſes; and ſo they were in *Edward I*'s Reign, till in his eighteenth Year he summoned Knights, Citizens and Burgesſes, and in his twenty third Year and always afterwards.

Brady 649.
Parl. Sum.
7.

The Tenants in *Capite* that held not *per Baroniam*, were summoned to Parliaments by general Writs to the Sheriffs to summon all the Tenants in *Capite* within their Bailiwicks; and theſe Tenants in *Capite* were before the forty ninth of *Henry III* the Representatives of the Commons, but ſeveral of them, who for their Prudence, military Valour, Loyalty, and other remarkable Qualifications, being well eſteemed by the Kings *Henry III*. *Edward I*. II. and III. had Special Writs directed to them when and as often as the Kings thought fit to require their Advice; who being only Knights, had the Title of Chivaliers and were called Peers as being *Parēs Baronum* when they were summoned by Special Writ as before mentioned in page 187, where appears ſome were summoned once, twice and more times, and ſome during the Lives, and in ſome Writs there were, *habeantur vice tantum*, and their Descendants omitted at the King's Pleaſure. *Edward*

Parl. Sum.
Preface.

Edward I. instead of the Tenants *in Capite* that were *Barones minores*, by whom the Commons were for the most part formerly represented in imitation of *Montford* and the Barons that rebelled against his Father, caused a certain Number of Knights for the Shires, Citizens for the Cities, and Burgeses for the Boroughs, to be elected and sent as the representative Body of the Commons.

In the Writ of Summons to the Parliament of the eighteenth of *Edward I.* the Sheriffs are commanded to cause two or three of the discreetest and ablest Knights to be chosen for each County, to have full Power for themselves and the whole Community of the Commons of the County to consult and consent for themselves and that Community, to such things which the Earls, Barons and great Men shall think fit to agree upon.

The Proctors of the Clergy sometimes appeared in Parliament as Spiritual Assistants, to consider, consult, and consent, but had never Votes there.

One of *Edward II.*'s Parliaments was called Parliament *de la Bond*, from the Barons coming to Parliament armed against the two *Spencers*, wearing colour'd Bands upon their Sleeves for Distinction.

C H A P. V.

Burghs or Boroughs, their Rise and Antiquity, and when they first sent Burgesſes to Parliament.

TH O' the old *Britons* were unletter'd and barbarous; they either from Information, their own Judgment, or ſome how or other, governed the *British* Nation much after the *Roman* Manner in the Article, that is the Subject of this Chapter. The *British* Court of the Street or Village where the *Druides* preſided both as Priest and Judge, pretty nearly reſembled the *Roman Caria*, with its Priest the *Curio*. During the Continuance of the *Roman* Government in *Britain*, Markets were at the Gates of the *Roman* Camps, Caſtles and Forts, to ſupply the Garifons with Proviſions which the Countrymen brought in to ſell there, and the Governors of thoſe Camps, Caſtles and Forts, appointed an Officer to preſide in ſuch Markets to ſee that the Proviſions brought to the Gates were wholeſom and good, which Deputy alſo had Orders and Power given him to determine all Matters of Difference that ſhould ariſe about Rights and

and Properties, of the Goods brought thither for Sale by the Country-People.

The Country-People at first made use of Tents or Booths to shelter themselves and their Goods from Extremities of Weather; afterwards they built little Huts, and then Dwelling-houses, before the Gates of Castles, *1 Inst. 109.* and so grew up Boroughs and Cities, Prescription Markets, Officers of Justice that judged Men and Matters there.

The Saxons followed the same Method, *Li. Æthelst.* as appears by Æthelstan's Laws, *Nemo ex-^{12.}*
tra oppidum, nisi præsente oppidi præposito
aliisve fide dignis hominibus, quicquam emito.
The Word *oppidum* is in the original Saxon Fort, *i. e.* Castle, or fortified Place, *i. e.* *Mirror, 14.* City or Borough.

Castles, Forts, Cities and Boroughs in the Saxon Times had many and great Privileges which they prescribed to, from immemorial Custom and Usage, not only by their Officers to determine Market-Rights of buying and selling Goods, but also to judge Criminals and to determine civil Controversies between Man and Man.

These Rights continued in the Norman *Archaion,* Reigns, being confirmed by William I. in *171.*
his sixtieth and sixty first Laws, where it is expressed that there shall be no Fairs or Markets except at Castles, Cities, and Boroughs, where the Laws and Customs of the

the Realm, common Justice, the Dignity and Rights of the Crown or Privileges of the People cannot be injured; Crimes against the King's Crown and Dignity, and other criminal Matters, and also Justice between Man and Man, Rights of Property, to be heard, judged and determined according to Law, by the Lords and Constables of Castles, by the Bailiffs of Cities and Boroughs in Conjunction with legal Assessors: For (says the Law) Castles, Cities and Boroughs were at first founded and built for the Defence of the Nation and People, to that end fortified to be of Defence against foreign Enemies and Invaders; Judges and Ministers were appointed to dispense Judgment and Justice to the People.

1 Inst. 109.

The *English* ancient Boroughs, that were not incorporated by Royal Charters, arose from Jurisdiction military or civil: Those from military Jurisdiction I have already given a short Account of; it remains to give account of such as arose from civil Jurisdiction.

The least Jurisdiction of the Saxons, was the Friburgh or Tithing, called in the North Parts of *England*, *Tienmantale*, in *Latin*, *Decuria*, *decemvirale collegium*, a Society of ten Housholders that were bound for one another to the King's Peace.

The

The next superior Jurisdiction was the Hundred that had Jurisdiction over ten Tithings or a hundred Families; and all Persons were to be under Surety of the Peace enter'd into the *Decenna* or Hundred Court or Tourn.

Some great Lords of Castles or fortified Towns had in their Sokes or Manors several Villages appendant thereto, wherein they had the same Jurisdiction with the *Decanus* in the *Decenna*, and such Castle or fortified Village was termed a Borough.

The Castles and fortified Places of the King's Demeans committed to the Custody of Constables or Deputies, were also Boroughs, in which the Constables or Deputies had Jurisdiction in Cases criminal and civil.

The Lords of Boroughs had the Tolls and Duties thereof and also the Rents of Houses and Lands, which were at the arbitrary Will of the Lords, and were no otherwise represented in Parliament than by their Lords, who took care of the Interest of their Tenants, in all Royal Aids and Subsidies, the Ease of the Tenants rendering them more ready and able to pay to their Lords their Rents and Duties.

When a Lord had in a Capital Town of his Soke, Thol, Theam, and Ingfang- these, with View of Frankpledge, Pillory, Ducking-

ll. Edw.
Conf. 21.

Ducking-stool, and other Ensigns of Jurisdiction, such Place was esteemed a Borough, called in *Edward the Confessor's Law* Fri-burgh.

Whilst the Inhabitants of a Lord's Borough paid to the Lord uncertain Rents, Duties, and Services they were in Villainage: when the Burgeses had obtained Favour of their Lord to be under certain Rents, Duties, and Services, Villanage ceased, and then they became Tenants in free Burgage, and the Borough a free Borough. And when Burgeses were summoned to Parliament, such free Borough sent Burgeses to the Parliament, as an ancient free Borough before time of Memory: this is the Borough by Prescription without any Charter of Incorporation: And when such Borough was to be represented in Parliament, the Residents elected some of their Number, and the Lord thereof made Return of the Persons chosen to the Sheriff. Where the Lord of the Manor, Headborough, or Constable make Return of Burgeses to Parliament, that is a certain Indication of an ancient free Borough by Prescription.

The Lord of a free Borough gathered his certain Rents, Tolls and Duties, by his Steward, Bailiff or Officer of his own appointing. In some Honors, Manors, and Boroughs

Boroughs, the Custom grew up that the free Tenants or free Burgesſes ſhould take it in Turn to gather the Lords Rents, &c. and during the time he continued in ſuch Office he was called the Lord's *Reve*: This Custom ſtill is continued in ſeveral Manors.

Some Lords of Manors and Boroughs granted their Demeans to the Burgeſſes in Fee-Farm Rent certain, and the Burgeſſes were to make the beſt of the Lord's Demeans, paying to the Lord the certain Rent; for Inſtance,

The Borough of *Plympton* in *Devonſhire* Willis, vol. 2. 330. is recorded in Domesday under the Title of *Terra Regis*; it was the King's Town but not a Borough, till ſo made by *Baldwin de Rivers*, who fortified it and endowed it with Borough Privileges, as appears by his Charter bearing Date the 25th of *March* 1241. the twenty fixth of *Henry III.* in theſe Words, ' *Baldwin de Redvers, &c.* Be it known, ' that we have granted to our beloved Bur- ' geſſes of *Plympton*, the Borough of *Plymp-* ' *ton*, with the Markets, Fairs, and every ' thing thereto belonging, to have and to ' hold of me and my Heirs for ever (as ' fully and freely as the Citizens of *Exe-* ' *ter* hold their City of the King, &c.) ' paying yearly 24 l. 2 s. 2 d.' This Town Dugd. Baron, 254. was granted to *Richard de Rivers* firſt Earl of *Devon* by *Henry I.* as appears by an

Q

Inſpexi-

Inspeximus of the thirteenth of *Edward III* d. who confirmed the Charter of *Baldwin*.

Willis, 104,
108.

*Brady of
Burghs
Append.
35.*

Aylesbury in *Buckinghamshire* is recorded in *Domesday* for ancient *Demean*, and in the fifth of King *John* was by the King granted to *Geoffry Fitz Piers* Earl of *Essex*; which being an ancient Borough by Prescription, when Burgesſes were ſummoned to Parliament the Lord of the Borough returned them. This Borough paſſing through ſeveral Families came in *Henry VIII*.'s time to *Thomas Packington*; in the fourteenth and eighteenth of Queen *Elizabeth*, Dame *Mary Packington*, Widow of Sir *John Packington* made return of Burgesſes in theſe Words, viz. ' Know ye that I *Mary Packington*, &c. have choſen, named and appointed my truſty and well-beloved *Thomas Lichfield* and *George Burden*, Eſqs; ' to be my Burgesſes for my ſaid Borough ' of *Aylesbury*, &c.' And in the twenty eighth of *Elizabeth*, the Burghers choſe *Thomas Tasburgh* and *Thomas Scot*, Eſqs; and *John Packington*, Eſq; Lord of the Manor, made the Return: Notwithſtanding theſe Returns by the *Packingtons*, *Aylesbury* was incorporated by Charter in the firſt of Queen *Mary*, and therein called an ancient Borough, and purſuant to ſuch Charter, the Sheriff of *Buckinghamshire* returned two Burgesſes for the Borough of
Aylesbury

Aylesbury to the Parliament of Oxford in the first of Queen Mary. How the Packington Family came to make Returns I don't find, and therefore I leave the Matter of Fact without Observation.

The Parliament Burgeſſes of *Stockbridge* Brady in *Hampshire* were chosen by the free Burgeſſes in the Court-Leet, and the Return made by the Lord's Steward. Burghs 28:

The Parliament Burgeſſes of *Agmondeſham* Willis 117: were chosen by the Homage in the Lords Court-Baron, and the Return made by the Constables.

Now I proceed to an Account of Royal Boroughs, the *Dominicæ Civitates, & Burgi Regis*, the Castles, and fortified Towns of the King's Demeans, the Constables of the Castles, and the Stewards or King's Deputies in his Honors, Sokes or Manors, who had an original Jurisdiction within the Limits thereof, derived from the King, the particular Lord there.

Whilst the People paid uncertain Rents, Duties and Services, they were in Villanage, the King's Villains, the King employing Stewards, Bailiffs, or *Reves* to gather his Rents, Duties and Tolls; these *Publicanes* or Tax-gatherers, made heavy Exactions upon the King's Tenants that were in Villanage and Tenants at will.

Willis 2.
vol. 461.

When the Towns of the King's Demeans, consisting of Houses, Lands, Tenements, Tolls, Customs and other Duties, were at the Will of the King, his Tenants were in Villanage, and the Rents, &c. were gathered by the King's *Reves*, Tax-gatherers or Publicans, whose arbitrary Proceedings and Exactions rendered not only their Actions but their Persons odious to the People.

Madox
290.

The chief Inhabitants of a Royal Town or Borough, petition the King to grant to them his Rents, Tolls, and other Duties, under a certain Rent, which Petition the King complying with, ordered his *Reves* to make out a Particular of the Rents, &c. and then set a certain Sum to be paid by the select Body of Townsmen, granting them Authority to collect and gather the Royal Rents, Issues and Profits, out of which they were to pay the King a Fee-Farm Rent certain, and then Villanage ceased, and the Tenants became from such Contract free Burghers, and the Town a free Borough. The Burghers were all jointly bound for the true Payment of the Fee-Farm Rent, and chose one of their own Body to gather the particular Rents, and answer the Fee-Farm to the King, and this Officer was called *Portreve*, who in time grew up to be the chief Magistrate of the Borough, Port or Fort.

*Firma
Burgi
Passim.*

There

There were many free Boroughs in the time of the Saxon Kings register'd for such in Domesday, with the Number of Burghers and the certain Rent payable to the King, and this Contract for certain Rent was a sort of incorporating the King's Tenants, and these were the ancient Boroughs by Prescription, in which Privileges grew up by Usage.

Afterwards ancient free Boroughs petitioned the Kings for Charters of Grant for Gilds, Fairs, Markets, Liberties, and Franchises; in consideration whereof the Borough offered the King an increased Rent over and above the ancient reserved Rent, which was twenty, thirty, or forty Pounds *de incremento*, as called in the Charters. When the King accepted the Offer, the King granted a Charter of Incorporation, with certain Liberties and Privileges, and certain *Locata*, or demised things that yielded Issues and Profits, *ad incrementum, meliorationem & emendationem Burgi*, to enable the Burghers to live comfortably and to pay their increased Rent with more Ease.

In Charters of Incorporation the Privileges are particularly expressed, as in the Charter to *Bedford*, granted the thirteenth of *Henry II.* the Burgeses of *Bedford* upon paying forty Marks had the same Liberties

Brady's
Burghs. 39.
82.

Madon,
290.

Willis vol.
2. 539
Append. 2.

Madon,
273, 259.

Liberties with the Burgesſes of Oxford. And Henry III. in the eleventh Year of his Reign granted the Borough of Bedford to the Burgesſes there in Fee-Farm of forty Pounds *per Annum. Et habere Soc & Sac, & Thol & Them & Ingfantheſe & Gildam Mercatoriam, &c. & quod quieti ſint de Theolonio, Pontagio, Stallagio, Laſtagio, & de Paſſagio, &c.*

*Firma
Burgi 30.*

*Stowe's
Lond. 218.*

The ancient Saxon Kings frequently granted to Boroughs, Gilds religious, military and mercantile; when a Borough was gildated with *Gilda mercatoria*, the Head or Chief of the Gild or Brotherhood was generally ſtiled in the Charter Alderman, and was of the Nature of a Soke or Manor, and the Alderman as Lord thereof. The ancient Knighten-Gild in London, founded by King Edgar's Charter, was also called a Soke from the *Franchiſes* Liberties and Privileges granted in the Charter, and its Situation being at *Aldgate* it was called *Port-Soken*, and in time became one of the Wards of the City, and the Alderman of that Knighten-Gild, one of the Aldermen of the City, by the Title of Alderman of *Port-Soken* Ward. Edgar's Charter to this Knighten-Gild was confirmed by *Edward the Confessor*, *William I.* and *William II.* by *Henry I.* and *Henry II.*

William

William I. let out Boroughs of his Demesns to the Burghers at certain Fee-Farm Rents, and Tradesmen paid Fee-Farm Rents for Mercantile Gilds.

The ancient free Borough was of the Nature of a Soke or Manor; the Lord of the Soke held Plea of Right and with the Suiters of his Court made By-Laws; and the Lord of the Borough with his free Burghers exercised judicial and legislative Power over the Inhabitants of the Borough, and made Laws for Government thereof, which were termed By-Laws or Borough-Laws.

Brady
Burghs
17, 21.

The Lord that held *in Capite per Baroniam* served the King in his Wars, with as many Knights as he held Knights-Fees *in Capite*, and paid Escuage. The Royal free Boroughs in lieu of Services, paid certain Rent and Tallage.

Willis
Append. 3.

The Tenure-Knight is render'd in *Latin* miles, and the dubbed Knight *eques* only; for *eques auratus* is not used in ancient *Latin* Authors. In Edward III's. time the Barons that were Knights were stiled Chevaliers, they liking that Name rather than *Milites*, the legal Word for Tenure-Knight. All the Barons that were Knights were stiled Chevaliers: John de Audely not being a Knight, in the Summons to Parliament of the first of Edward IV. is stiled Armiger, and all the rest Chevaliers.

4 Inst. 51

Parl. Sum.
458.

The Antiquity of National

When Burgeſſes were in *Henry III's*, time ſummoned to Parliament, the ancient Boroughs by Preſcription had equal Right with thoſe that were incorporated by Royal Charters to ſend their Representatives to Parliament.

It often occurs in Hiſtory and Records that Maritime Boroughs and Inland Boroughs, that have been great Sufferers by Shipwreck, Fire, or other Miſfortunes, have therefore obtained Favour in Parliament to have ſome Part of their Tallages, Tenths and Fifteenths abated in conſideration of their Loſſes, and ſuch Eaſe got for them by the Lords of whom the free Boroughs were holden; but how the Royal free Boroughs held *in Capite* of the King, were repreſented in Parliament, and obtained Favour there in Conſideration of Loſſes or Miſfortunes that attended them, they having no Baron, no Tenant *in Capite* there to repreſent them, they holding immediately of the King, I ſhall next endeavour to ſhow,

3 *Inf.* 77.

Firma
Burgi, 21.

That Lands and Tenements holden in Bur-
gage (ſays Sir *Edward Coke*) is no Tenure *in*
Capite, but the Royal free Boroughs being
holden immediately of the King muſt be
holden *in Capite*, which not being holden
in Knight-Service, muſt be in free Bur-
gage, of which Mr. *Madox* gives many
Instances out of Records: He copies a Re-
cord

cord of an Exemplification in the thirty seventh of *Edward III.* wherein it appears that *Michael de Northburgh* late Bishop of *London* held Rents, Lands and Tenements in *London*, *de Domino Rege in Capite in liberum Burgagium, sicut tota Civitas Londoniæ*, &c. and mentions other Records of Lands, Rents, and Tenements in *London*, held of the King *in Capite* in Freeburgage, and gives Instances of Lands, Rents, and Tenements held of the King *in Capite* in Freeburgage in *York*, *Winchelcombe* and other free Boroughs.

Now to the Point, how Royal free Boroughs obtained Abatement of their Tallages, Tenths and Fifteenths, set upon them in Parliament, they having no Superior there to represent them; therefore instead of having Motion made in Parliament for Abatement in consideration of Losses, Misfortunes, or Poverty; the Burghers of Royal Boroughs presented Petitions immediately to the King, to take their Misfortunes into his Royal Compassion and Consideration, and the King weighing the Merits of their Case, made Abatements of the Tallages set upon them in such Measure as their Losses or present Poverty appeared to merit, the Tallage being his, by parliamentary Grant, he remitted in such Measure as appeared to be equitable and charitable.

For

Willis vol.

2. 452.

Cot. Recor.

101, 111,

475.

For Instance, *Melcomb Regis* in *Dorsetshire* a Royal free Borough under the Fee-Farm Rent of eight Marks *per Ann.* in *Edward III's* time, being in *Richard II's* time much impoverished and desolated by Reason of the *French* burning it, prayed Discharge, which the King granted, by Charter, and *Henry IV.* in the first Year of his Reign confirmed King *Richard's* Charter, exempting them from the ancient Fee-Farm Rent, and also from all Tenths and Fifteenths for twelve Years ensuing; and in the eleventh Year of his Reign, granted a Discharge of the old Fee-Farm Rent for ten Years ensuing, upon paying twenty Shillings Fee-Farm Rent, and six Shillings and eightpence for *Desmes*: And *Henry V.* in the first Year of his Reign remitted all Arrears.

There are many other Instances of Royal Favour to Royal free Boroughs, wherein they appear to have as great Favours granted them as the Boroughs, that were represented in Parliament by the Lords of whom they held.

In the forty ninth of *Henry III.* the King's Writs were sent to all Sheriffs to return two Knights for the Shire, two Citizens for each City, and two Burgeses for each Borough, without Distinction of Royal free Borough, or Lords free Borough, and

and from that time Burgesſes of Borough muſt derive their firſt Right of being Members of Parliament: Tho' Henry III. ſummoned no more Burgesſes to the ſucceeding Parliaments of his Reign; Edward his Son ſent Writs to the Sheriffs to return Knights, Citizens, and Burgesſes: In the eighteenth and twenty third of his Reign he ordered Manucaptors to be endorsed upon the Returns, four for Knights of the Shire, and two for Burgesſes. But notwithstanding the King's Care that all Burgesſes ſhould appear, the Sheriffs rarely made Returns for all the Boroughs of their Bailiwicks. The Writs did not particularly name the Boroughs that were to ſend Burgesſes, but were general, viz. *de qualibet Civitate duos Cives, & de quolibet Burgo duos Burgenſes, &c. eligi facias.*

Brady
Burg. 52.
55.

The Form of the Returns annexed to the ancient Writs, indicates ſomething of a diſcretionary Power in the Sheriff, who after the Names of the Knights, Citizens, and Burgesſes, with their ſeveral Manucaptors, concludes thus, viz. *non ſunt plures civitates vel Burgi in Balliva mea*, tho' there were more Boroughs there, and ſometimes the Return concluded in theſe Words, viz. *Et non ſunt aliæ civitates ſeu Burgi infra comitatum, de quibus aliqui cives, ſeu Burgenſes ad dictum Paliamentum*

Brady
Burg. 57.

Willis vol.
2. 242.

Cot. Recor.
536.

Parl.
Elſing 73.

1 Hen. V. 1.

Parliamentum venire debent seu solent, propter eorum debilitatem seu paupertatem. Anciently Burgeses were chosen out of the Resients in the Borough, and not Country Gentlemen and Ministers of State as of late Days. In the first of *Henry V.* it was at the Petition of the Commons enacted that Burgeses return'd to Parliament should be Resient in and free of the Boroughs, for which they were returned.

Brady's
Burg.
54, 59.

The Sheriffs frequently left out of their Returns, small inconsiderable Boroughs that were poor and not in Condition to pay their Burgeses their Wages, or such as had not Resients qualified for Service in Parliament, and such Omission was according to the Favour Boroughs could obtain from the Sheriffs.

The great Number of Boroughs in *Cornwal* and the adjacent western Counties is owing to the Favour of the old Earls of *Cornwal* and *Devonshire*, Men of great Power and Demeans, the Earls of *Cornwal* being all of them related to the Kings of *England*: And *De Rivers*, *De Fortibus*, and *Courtney*, Earls of *Devon*, great and powerful Men, who made many of their Towns, Boroughs; many of them being poor, by the Interest their Lords had with the Sheriffs, got to be excused from sending Burgeses to Parliament, so that many of

of them were quite dropt, till revived again by *Edward VI.* and *Queen Elizabeth* as ancient Boroughs that had been neglected and overlooked. Willis, vol. 2. 243.

Some Boroughs obtained Exemptions from Service in Parliament by Royal Charters, as *Toryton* in *Devonshire* did from *Edward III.* in the forty second Year of his Reign, tho' that Borough had made about thirty Returns of Burgesses to Parliament in his and the two preceding *Edwards* Reigns.

Of the great Number of ancient free Boroughs in the County of *Cornwall*, only *Lanceston* alias *Dunbeved*, *Leskard*, *Loftwethiel*, *Truro*, *Bodmin*, and *Helfton*, sent Burgesses to Parliament till *Edward VI.*'s Time: The rest of the *Cornish* Boroughs being privileged by Charters, since the last Year of *Henry VIII.* and most of them in their Charters of incorporation, stiled ancient Boroughs. Willis Prof. 9.

The Sheriffs that neglected returning Burgesses for poor Boroughs or such as had no Residents qualified for Service in Parliament were not therefore blamed by King, Lords or Commons; but when the Favour was by Influence of great Lords to serve some private Turn, they were accused in Parliament, or Petitions were presented to the King.

The

Brady's
Tracts 37.

The Abbot of St. *Albans* on some sinister View, prevailed on the Sheriff to make no Return of Burgeses for the Borough of St. *Albans* to the Parliament of the eighth of *Edward II.* which Borough being in a Condition to send Burgeses and pay their Wages, was not willing to be neglected at the Instance of the Abbot; wherefore the Burghers petitioned, setting forth that they were Inhabitants of an ancient free Borough and had sent Burgeses to the Parliaments of the King's Progenitors. The King's Council answered, let the Rolls in *Chancery* be searched, &c. if in the time of the King's Progenitors, the Burgeses aforesaid used to come or not, and then let them have Justice in this Matter, and such as have been called may be called, if there be Necessity.

Willis. vo. 2
495, 554.

Corffe Castle in the Island of *Purbeck* in *Dorsetshire*, made a free Borough by King *Edgar*, never sent Burgeses to Parliament till Queen *Elizabeth's* time, when many of the Boroughs in the *West of England*, obtained Royal Favour to be recognized as ancient Boroughs; amongst the rest the Queen granted a Charter to *Corffe* Castle therein reciting, That the said Borough was an ancient free Borough, and had enjoyed certain and divers

vers Rights, Liberties, Privileges, Freedoms and Exemptions, as well by Prescription as by and on Account of Charters and Confirmations by her Progenitors Kings of *England*; all which the Queen confirmed in her Charter; and the Queen's Charter was confirmed by *Inspeximus* in the thirty first Year of *Charles II.*

In the eighteenth of King *James I.* Parl. Jour. MS. 155, 163. the Boroughs of *Ilchester* in *Somersetshire*, and *Pontfract* in *Yorkshire*, petitioned the House of Commons to be restored to the ancient Rights and Privileges they enjoy'd in the time of his Royal Progenitors. The *Ilchester* Petition set forth that the Town is an ancient Borough and sent Burgeses to Parliament in *Henry III's* time and till the third of *Henry V.* since which time they being grown poor and not able to pay their Burgeses their Parliament Wages, were therefore excused by the Sheriffs of *Somersetshire*; and whereas they were grown able to pay Wages to their Burgeses, they desire to be restored to their ancient Privilege of sending Burgeses to Parliament: And farther they set forth in their Petition that in the time of *Philip* and *Mary* they obtained a Royal Charter in Confirmation of their ancient Rights and Privileges, whereof upon searching Records they find sending Burgeses to Parliament was one of them; which

which they did not know till they lately found it upon Record. Therefore, &c.

By Order of the House both the Petition of *Ilchester* and *Pontfract*, were referred to the Committee of Privileges and Returns, to consider of the Records concerning the Privileges of the said Towns mentioned in their Petitions.

The next Day Sir *George More* reported from the Committee of Privileges and Returns, that the Town of *Pontfract* in *Yorkshire* did send Burgeses to the Parliament of the twenty eighth of *Edward III.* and in the tenth and eleventh of *Henry VI.* that County having received the King's Writ for Election of Burgeses, did return that by Reason of their Poverty, caused by the Barons Wars they were not able to send any Burgeses to the Parliament, and only then sent Knights for their Shire. Since in the fourth of *James*, the King confirmed their Charter and ancient Privileges, That this Town now only desireth, that it may enjoy the same accordingly, and the King's Majesty's Grant.

And Sir *George More's* Report relating to *Ilchester* was, that it appeareth that *Ilchester* in the County of *Somerset*, did return and sent Burgeses in the twenty eighth of *Edward I.* and first of *Henry V.* That that Town hath all his ancient Privi-

Privileges confirmed to it, by a Charter by the King that now is.

It is the Vote of the House that the Towns, *Pontfract* and *Ilchester*, should and ought to send Burgeses to the Parliament; according to their ancient Privileges; confirmed to them by Charters from his Majesty. And it is accordingly ordered that the Speaker shall send a Letter to have Writs go down to these Towns for the Elections of Burgeses there.

Many ancient Boroughs that by Disuse had lost the Privilege of returning Burgeses to Parliament have obtain'd Re-grants of their ancient Privileges by Royal Charters since *Henry VIII's* time, of which you may see a great many Instances in the Preface to *Brown Willis's Notitia Parliamentaria*.

The Royal Charters of Confirmation, *Willis*
of Privileges, of ancient Boroughs, generally *Prof. 22.*
express, 'Whereas the Town was an
'ancient Borough, and had certain Rights
'and Privileges;' and then proceed in confirming particular ancient Rights and Privileges: Many ancient Boroughs made no Returns of Burgeses to Parliament. Of the great Number of Boroughs that now send Burgeses to Parliament all are revived or new made that are over and above the Number of 126, there being no
R more

more parliamentary Boroughs in the Year 1546, the last of *Henry VIII.*

It is difficult to discover the original Right of Boroughs to send Burgesſes to Parliament, many ancient free Boroughs that ſent Burgeſſes to Parliament in *Edward I's* time upon the Writ to the Sheriff to return Burgeſſes for each Borough in his Bailiwick, after two or three times appearing; finding an Expence beyond their Inclination to bear, neglected appearing, ſo long as to loſe their Right; and theſe I take to be Preſcription-Boroughs, whoſe Privileges were kept in Memory by Uſage only, which by Diſuſe might loſe their Claim to the Privilege diſuſed; for if ſuch Privileges were in *Scriptis*, in Charters, and upon Record, it could not grow obſolete and loſt by Diſuſe; ſuch Charter Boroughs as had a Deſire to be diſcharged from Service in Parliament were forced to petition the King for Charters of Exemption, as *Torington* was releaſed by a Royal Diſcharge as before-mentioned.

4 Inſt. 49.

Some Boroughs, that through Neglect of ſending Burgeſſes to Parliament had loſt that ancient Privilege, recovered it again by obtaining Royal Charters, ſome by Vote of the Houſe of Commons; ſome Boroughs were made *de novo* by Royal Charter,

ter, and some by Act of Parliament; but the original of the old *Saxon* Boroughs and of those of the old *Norman* Kings and Barons, is very obscure: Some and those very few, the ancient Historians have transmitted an Account of to Posterity.

Barnstaple in *Devonshire* shews Antiquity in its Name; for, says *Risdon*, *Bar* in *Risdon's* the *British* Language signifies the Mouth *vol. 1. 105.* of a River, and *Staple* in the *Saxon* a Mart Town, for selling Merchandises: And *Leland* says it obtained its Liberties *Leland Itin. vol. 2.* from King *Æthelstan*, and in *Domesday* is *54.* register'd to be the King's Demean Borough, having forty Burgesſes within the Borough and nine without, and paid to King *Edward the Confessor* forty Shillings by Weight. The Castle and Borough was granted by *William I.* to *Jobel de Totnais*, *Brady's Burgh. 5.* or *Totneſs*; and when Burgesſes were summoned to Parliament sent Burgesſes from *Willis vol. 2. pag. 308.* the twenty third of *Edward I.* This Borough was incorporated by *Henry I.* by Royal Charter, and the Privileges enlarged by King *John* and Queen *Mary*, and confirmed by *James I.*

Tho' *Barnstaple* as an ancient Borough, *Willis vol. 2. 372.* sent Burgesſes to Parliament from *Edward I.* to the present time; yet some ancient free Boroughs sent no Burgesſes to Parliament, as in Page 137.

* Lord
Hobart Bar-
on of
Blickling.

Bere in *Devonshire* being granted to one of the Royal Family of *Alençon* in *France* by *William I*, had the Name of *Berealsen*, and passing through the Families of *Ferrers*, *Champernone*, *Willoughby*, *Blount*, it came at last to * *Sir John Hobart* of *Blickling* in the County of *Norfolk* Bart. and was made a Borough by its ancient Lords, yet never sent Burgeses to Parliament till the twenty seventh of *Elizabeth*, when many ancient mean Boroughs were summon'd to return Burgeses. The returning Officer is the Port *Reve*, who is annually chosen in the Lords Court by the Freeholders, which is an Indication of its being an ancient Borough.

Willis,
vol. 2.
114.

Tregoney in *Cornwal*, an ancient Borough, made two Returns of Burgeses to Parliament in *Edward I*'s time, viz. in his twenty third and thirty fifth Years, and never sent any more Burgeses to Parliament till the first of Queen *Elizabeth*.

Willis,
vol. 2.
212.
Pref.
XVIII.

Cockermouth in *Northumberland*, an ancient Borough, sent Burgeses to Parliament in the twenty third of *Edward I*, and no more till 1640, when the House of Commons, upon View of Records, found it had formerly sent Burgeses to Parliament, therefore order'd a Warrant to be issued under the *Speaker's* Hand, directed to the Clerk of the Crown in *Chancery*, to send out a Writ for Election of Burgeses to serve in Parliament for the Borough of *Cockermouth*. *Hony-*

Pryn's
Parliam.
Write. Pt.
4. p. 1182.

Honyton, made a Borough by *Isabel* Wife to *William de Fortibus*, and Daughter and Heir of *Baldwin de Rivers* Earl of *Devonshire*, sent Burgesſes to Parliament in the twenty eighth of *Edward I.* and in the fourth of *Edward II.* and no more till the Borough was reſtored to its ancient Privilege in the ſixteenth of *Charles I.*

Willis, vol. 2, 341.

Brady's Burgh, 42.

A Multitude of ſuch Inſtances may be given out of Records, Parliament Journals, and Hiſtory, of ancient Boroughs loſing the Privilege of ſending Burgeſſes to Parliament, and after a long time loſt, recovering again, either by Royal Summons, Charter, Vote of the Houſe of Commons, or Act of Parliament.

Cheſter hath anciently had Parliaments held by the Count Palatines of *Cheſter*, till the Palatinate fell into the Crown by the Death of *Simon Monfort* Earl of *Leiceſter* and *Cheſter*, at the Battle of *Eveſham* in *Henry III's* time, from which time the Palatinate eſcheated to the King, and neither County nor City ſent Members to the Parliament of *England* till the firſt Year of *Edward VI.* that Privilege being granted by Act of Parliament in *Henry VIII's* time.

34 & 35 H. VIII. 13.

In the firſt Year of King *James I.* a Charter was granted to the Univerſity of *Cambridge* to ſend Members of Parliament.

Willis, 142. Pref. XIV. XIX.

The Antiquity of National

Harwich sent Burgeſſes to Parliament in the ſeventeenth of *Edward III.* but ſent no more till reſtored to that Privilege by Charter in the ſecond of King *James I.*

C H A P. VI.

The Speaker of the Commons in Parliament,

THE Saxons Parliaments conſiſted of *Wita's* or Nobles only, and the Norman Parliaments only of Barons and Tenants *in Capite*, who repreſented their Tenants and took care of their Interests in Parliament.

William the Conqueror's Laws were made *Conſilio Baronum*, as *Henry I.* ſays in his ſecond Law. *Hoveden* and the Author of the *Lichfield Chronicle* ſay, the twelve Commiſſioners King *William* ſummoned out of each County to make report of what were the ancient Laws of the Kingdom, were ſent for *conſilio Baronum*, and the Report they made was *in conſilio Baronum*. There is no mention of Commons in King *William's* Parliaments either in Abby Leidgers or Registers, ancient

Tit. Hon.
701.

MS. Parl.
cap. 4.

ent History or Annals; though some modern Writers have wrested some Expressions of ancient Historians, without taking notice of the whole Scope of the Authors, and endeavour to prove Commons in the early *Norman* Parliaments, by stealing Patches from one and another of the Ancients, and stitching them together in such fashion, as to make some appearance of such a Cloak as they have a mind to put upon us; As *Polydore Virgil* and his Followers, in this Case, have shamefully perverted the Sense of *Paris*, *Hoveden*, *Eadmer*, and *Florence of Worcester*.

William Rufus held a great Council or Parliament at *Rockingham*, where, says *Eadmer*, a certain Knight came forth and stood before the People and spoke in the Name and in Behalf of them all, whereby the Mind and Consent of the People was understood. This great Knight must not be taken for a Knight elected by the People, as Knights of the Shire were afterward; not one Word in *Eadmer's* History giving any shadow of such a Knight so chosen; no, this Knight must be a Tenant *in Capite* summon'd to Parliament by the King's Writ as all Tenants *in Capite* were.

The *Saxon* Kings, and *William I.* and his two Sons presided in Person in their Courts *de more*, and summon'd Parliaments, there-

Eadmer,
34, 39,
40, 41.

Cot. Post-
hum. 432
43.

fore in their Times we search in vain for a settled Speaker. History is full of the personal Debates and Disputes between *Henry II*, and Archbishop *Becket* in the Parliaments of *London*, *Clarendon* and *Northampton*.

42. H. III.
A. D.
1258.

Dugd. Ba-
ron. 407.

Brady,
624, 626.
628, 645.
651, 652.

The next pretended *Speaker* of the Commons that the Advocates for the Commons in Parliament produce, is *Peter de Montfort*, which they take out of the Register of *St. Albans*, where it is said, that he, *vice totius Communitatis*, consented to the Banishment of *Adomer de Valence* Bishop of *Winchester*; but this won't serve their turn neither, for this *Peter de Montfort* was a great Tenant in *Capite* descended from *Hugh de Montfort* a *Norman*, who held in *Capite* of *William* the Conqueror twenty eight Manors in *Kent*, besides a large Share in *Rumney-Marsh*, sixteen Manors in *Essex*, fifty one in *Suffolk*, and nineteen in *Norfolk*. And his Descendant *Peter* in *Henry III*'s time held the Castles of *Beldfert*, *Horestan*, *Bruges* and *Ellesmere*; and in the forty second of *Henry III*, was chosen by the rebellious Barons to be one of those select great Men that were to reside at Court to exercise Regal Power, to dispose of the Custody of the King's Castles, to nominate Chancellor, Justices, Treasurer and other Officers and Ministers of State: From all
which

which it may be fairly concluded, that this *Peter de Montfort* was not a Commoner nor *Speaker* of the Commons. This *Peter de Montfort* was also chosen by the Committee of four Lords, one of the King's Council, which were all at that time *Barons* and great Tenants *in Capite*. He is in the Number of the *Barons* killed at the Battle of *Evesham*.

In the forty ninth of *Henry III*, Knights, Citizens and Burgesſes were ſummon'd to 4 *Inst. 4.* Parliament, and Lords and Commons ſat together in the ſame Room, and then the *Speaker* of the Parliament was the Lords *Speaker*.

After the Battle of *Evesham*, *Henry III* being deliver'd from the Tyranny of the *Barons*, ſummoned no more the Commons during his Reign.

In the eighteenth and twenty third of *Edward I*, Lords and Commons met together in the ſame Room to hear the Cauſes of calling the Parliament, and when that was declared, Lords and Commons ſeparated to conſider and debate apart of the Matters given in charge; and then in all likelihood, the Commons had a Chairman or *Speaker*, to regulate their Debates, and to report their Reſolves and Determinations to the King and Lords; but as there is no *Speaker's* Name upon Record before *Edward*

Dugd. Baron. 394.

Parl. Elsing 238.

Daniel,
fol. 257.

Cotton,
post. 20.

4 *Inst.* p. 2.

ward III's time, it is probable there was no standing *Speaker* to continue during the whole Session of Parliament, but sometimes one of the Commons order'd into the Chair, and sometimes another: Some Resolves were ordered to be made by one, and some others to be reported by another: As *William Trussel* in the nineteenth of *Edward* II was in the Chair when *Hugh de Spencer* the younger was accus'd of Treason in Parliament. And in the sixth of *Edward* III, the Commons made answer by Sir *Jeffery le Scroop*; and in the fifteenth by Sir *William Trussel*, and in the forty ninth by Sir *Peter de la Mare*; but these are not *Speakers* upon Record. The first *Speaker* that is upon Record is Sir *Thomas Hungerford* in the fiftieth of *Edward* III, when the Cause of Summons being ended, the Commons were order'd to withdraw to their ancient Place in the Chapter-house of the Abbot of *Westminster*. In the fifth of *Richard* II, Sir *Richard Walgrave* was chosen by the Commons to be their *Speaker*, who made excuse and desired to be discharged; and he is the first *Speaker* that appears upon Record to have made Excuse, but the King commanded him upon his Allegiance to accept the Place, seeing he was chosen by the Commons.

In the fifth of *Henry* IV, Sir *Arnold Savage* being chosen *Speaker*, after making excuse,

cuse, desir'd the King in the Name of the Commons, that they might freely make complaint of any thing amiss in the Government, and that the King by the sinister Information of any Person, would not take offensively that which they should complain of in that behalf, which Petition was yielded to by the King.

Sir *John Tiptoft* being chosen *Speaker* in the seventh of *Henry IV*, made excuse by reason of his Youth, which not being accepted, he desir'd that if any Writing was deliver'd by the Commons, and they should desire to have it again to amend or alter any thing therein, it might be restored to them, which was granted. Whilst he was *Speaker*, in the Name of the Commons he signed and sealed the Deed of entailing the Crown in the seventh of *Henry IV*. This young *Speaker Tiptoft* took more upon him, spoke more boldly and freely to King and Lords than any before him, whose Example being followed, the King and Lords put a check to it as a Novelty in the thirteenth of *Henry IV*, when *Thomas Chaucer*, as *Speaker*, desired Freedom as usual.

*Cotton's
Records,
462. 478.*

In the twentieth of *Henry VI*, the Commons presented to the King Sir *John Popham* to be their *Speaker*, whose Excuse was receiv'd, and he thereof discharged; then the Commons presented *William Tresham* for *Speaker* who was allowed.

In

Parl. Fl-
sing. 296.
Parl. Jour-
nal, MS.
77-
MS. Willi-
ams, 57.
Cot. Re-
cords, 651.

In the thirty first Year of *Henry VI*, *Thomas Thorpe*, Esq; *Speaker* of the House of Commons was arrested in Execution at the Suit of the Duke of *York*, between two Sessions of Parliament, wherein the Opinion of the Judges being demanded by the Lords, they refused to judge of the Liberties of Parliament as not belonging to them, whereupon the Lords without their Advice adjudged that he was not to have Privilege; which being signified to the Commons, and also the King's Pleasure, that they should choose another *Speaker*, they forthwith chose *Sir Thomas Charlton*.

Sir Thomas More, Chancellor of the Dutchy of *Lancaster*, was *Speaker* of the House of Commons in the fifteenth of *Henry VIII*, he made the usual Protestation for himself, and prayed that if any of the Commons should in Debate of Matters speak more largely than they ought, that they might be pardoned by the King, which the King granted,

Thomas Moyle, Esq; *Speaker* of the House of Commons in the thirty fourth of *Henry VIII*, petitioned for Freedom of Speech of the Commons in their House, which was granted.

Sir Thomas Gargrave, *Speaker* of the House of Commons in the first of *Queen Elizabeth*, made in his Speech to the *Queen*
four

four Requests; first, for free Access to the Queen; secondly, for Liberty of Speech; thirdly, for Privilege from Arrests; fourthly, that his mistaking might not prejudice the House.

Sir Thomas Richardson, *Speaker* of the House of Commons in the Parliament of the eighteenth of King James I, made a disabling Speech to the King as usual, desiring another *Speaker* might be chosen; but the King approving the Choice, the *Speaker* replied again, that he was much bound to his Majesty and the House, but he should have taken it as a greater Favour to have been spared, and fell into a large Speech, shewing how much *England* was blessed by God for sending so worthy and religious a King to rule over us, and concluded with a Petition for the usual Favour and Privilege for himself and the Commons. I mention no other of the *Speakers* but such as petitioned for some particular Favour or Privilege.

I conclude this Chapter with a short Recapitulation; The Kings of the Heptarchy presided in Person in their *Witenagemotes*, and so did *Alfred* and his Successors the Monarchs of *England* in their Courts *de more*, and in their *Witenagemotes* that were summoned upon extraordinary Occasions at different Times from the Courts *ex more*, at
the

the three great Festivals. And the Kings of the *Norman Race* presided in their Courts *de more* and Parliaments, till the Knights, Citizens and Burgeffes were summoned to Parliament, and till the Lords and Commons sat in two distinct Houses, when the Commons had a Chairman, sometimes one, and sometimes another, to report to the King in the Lords House, the Result of their Debates; and there was no settled *Speaker* during a whole Session of Parliament, till the fiftieth Year of *Edward III.*, as aforementioned.

The End of the First Volume.

